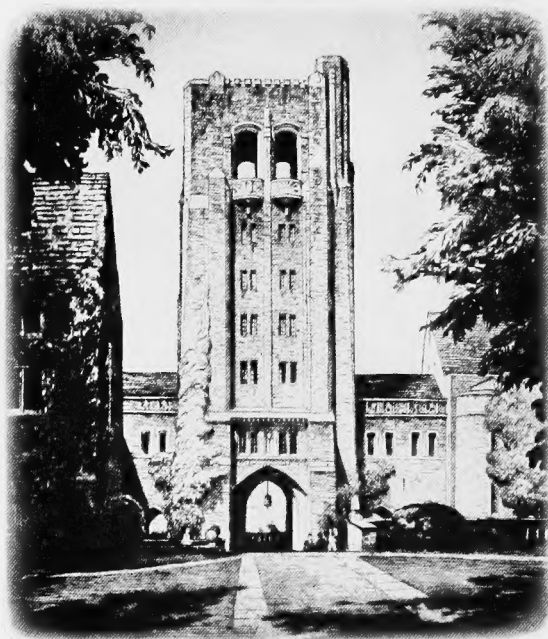


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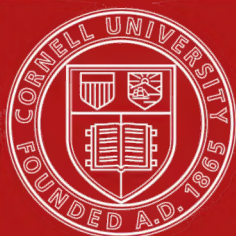
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# COMMENTARIES

ON THE

# LAW OF CONTRACTS

BEING A CONSIDERATION  
OF THE NATURE AND GENERAL PRINCIPLES OF THE  
LAW OF CONTRACTS AND THEIR APPLICATION  
IN VARIOUS SPECIAL RELATIONS

BY  
WILLIAM F. ELLIOTT

CO-AUTHOR OF  
"ROADS AND STREETS," "RAILROADS," "EVIDENCE,"

ASSISTED BY THE PUBLISHERS' EDITORIAL STAFF

IN SEVEN VOLUMES

VOLUME VI

ANNOTATED FORMS

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# ELLIOTT ON CONTRACTS

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## FORMS AND PRECEDENTS FOR CONTRACTS.

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### FORMAL CLAUSES.

#### 5125. Commencement clauses.

(1) This agreement made this — day of —, 19—, at —, —, between — of —, for himself, his heirs, and executors and administrators, of the one part, and — of —, for himself, his heirs, executors and administrators of the other part, witnesseth, etc.

(2) Agreement made at —, —, this — day of —, 19—, by and between —, of the one part, and —, of the other part. The said — agrees, etc.

(3) It is hereby mutually agreed by and between — and — as follows:

(4) Agreement made the — day of — 19—, by and between — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part. It is hereby agreed as follows:

(5) Articles of agreement made this — day of —, 19—, by and between — and —, merchants and copartners under the firm name and style of — & Co., party of the first part, and the — company, of —, —, a corporation duly organized under the laws of the state of —, party of the second part. The said parties mutually agree as follows:

1. As to whether particular form of words is required to create contract, see ante, vol. 5, § 4555.

2. Contract enforceable though form imperfect. See ante, vol. 1, § 26.

**5126. Testimonium clauses.**

(1) In witness whereof the said parties have hereunto set their hands the day and year above written.

(2) In witness whereof the said parties to these presents have hereunto interchangeably set their hands and seals the day and year first above written.

(3) Witness the hands and seals of the said parties.

(4) Witness the hands of the said parties.

(5) In witness whereof, the said parties have hereunto set their hands and seals this — day of —, 19—.

(6) In testimony whereof, I, —, have hereunto set my hand and seal to this my last will contained in — sheets of paper, upon each of which I have written my name at —, in the county of — and state of —, this — day of —, 19—.

**5127. Attestation clauses.**

(1) Signed, sealed and delivered in the presence of —.

(2) Witness to the signature of the said, —, —.

(3) Signed, sealed and delivered by the said —, I having read over to him the above-written agreement, and he having made his mark thereto, in my presence.

(4) Signed by testator, —, as his last will, in the presence of us, who, at his request, in his presence, and in the presence of each other, have hereunto subscribed our names as witnesses.

1. As to requisites of attestation clause see ante, vol. 4, § 3900.

**ACCEPTANCE.**

See FORMS ON ASSIGNMENTS FOR CREDITORS; BILLS AND NOTES; COMPOSITION WITH CREDITORS; OPTIONS.

**ACCORD AND SATISFACTION.**

See COMPOSITION WITH CREDITORS; RELEASES.

**ACCOUNT, ASSIGNMENT OF.**

See ASSIGNMENTS.

**ACKNOWLEDGMENTS.****5130. General form.**

STATE OF —, }  
 COUNTY OF —, } ss:

On this — day of —, 19—, before me the undersigned —, a — (insert name and official character) in and for said county and state, personally appeared —, known to me (or proved to me on the oath of —, known to me) to be the person whose name is subscribed to the within instrument, and acknowledged that he (or she or they) acknowledged the same.

Witness my hand and — seal at —, this — day of —, 19—.

My commission expires —, 19—.

(SEAL.)

1. See ante, vol. 4, §§ 3901-3909.

2. Statutory forms are generally given and these should be used. Alabama, 2 Civ. Code 1907, § 3361; Arizona, Rev. Stat. 1901, § 746; Arkansas, Dig. of Stats. 1904, p. 1672; California, Civ. Code 1906, § 1189; Colorado, 1 Ann. Stat. 1891, § 443; Connecticut, see approved form in *Sanford v. Bulkley*, 30 Conn. 344; Delaware, Rev. Code 1893, ch. 83, § 9; Dist. of Columbia, Garges Code 1901 (amended 1905), § 493; Florida, Gen. Stat. 1906, § 2482; Hawaii, Rev. Laws 1905, § 2364; Idaho, Rev. Code 1908, § 3131; Illinois, Rev. Stat. 1908, ch. 30, §§ 26, 27; Indiana, Burns' Rev. Stat. 1908, § 3982; Iowa, Code Ann. 1897, § 2948 (For "uniform legislation" form, see next form in text.); Kansas, Gen. Stat. 1901, § 1213; Maryland, 1 Pub. Gen. Laws 1904, art. 21, § 66; Massachusetts, 2 Rev. Laws 1902, ch. 127, § 18; Michigan, 3 Comp. Laws 1897, § 9020; Minnesota, Rev. Laws 1905, § 2684; Mississippi, Code 1906, § 2799; Missouri, 1 Ann. Stat. 1906, § 913; Montana, 1 Civ. Code Ann. 1895, § 1609; Nevada, Comp. Laws 1900, § 2647; New Mexico, Comp. Laws 1897, § 3945; North Carolina, Revisal 1905, § 1002; North Dakota, Rev. Code 1905, § 5022; Oklahoma, Comp. Laws 1909, § 1221; Pennsylvania, Laws 1909, No. 53; South Dakota, Civ. Code 1903, § 981; Tennessee, Code 1896, § 3717; Texas, 2 Civ. Stat. 1897, § 4620; Utah, Comp. Laws 1907, § 1989; Virginia, Code 1904, § 2501; Washington, Ballinger's Code 1897, § 4533; West Virginia, Code 1906, § 3076; Wisconsin, Stat. 1898, § 2217, 1907 amendment, ch. 568; Wyoming, Rev. Stat. 1899, § 2752.

**5131. General form—Uniform legislation.**

STATE OF —, }  
 COUNTY OF —, } ss:

On this — day of —, 19—, before me personally appeared — (or, — and —), to me known to be the person (or per-

sons) described in and who executed the foregoing instrument, and acknowledged that he (or she or they) executed the same as his (her or their) free act and deed.

Witness, etc.

1. This form has been adopted in Iowa, Massachusetts, Michigan, Minnesota, Missouri, New Mexico.

2. The Iowa statute uses the term "voluntary act" instead of "free act."

### 5132. Acknowledgment by husband and wife.

STATE OF —,                    }  
COUNTY OF —,                } ss:

On this — day of —, 19—, before me personally appeared — and —, his wife, and severally acknowledged the execution of the foregoing instrument.

Witness, etc.

1. See ante, vol. 4, §§ 3901-3909.

2. Statutory forms should be followed where enacted. Alabama, 2 Civ. Code 1907, § 4161; Arizona, Rev. Stat. 1887, § 2583; Arkansas, Dig. Stat. 1904, p. 1673, §§ 748, 751, 3901; Delaware, Rev. Code 1893, ch. 36, § 8; Florida, Gen. Stat. 1906, § 2462, appendix, ch. 5412; Georgia, Code 1911, § 4204; Idaho, Code 1901, § 2429; Code 1908, § 3129; Illinois, Rev. Stat. ch. 30, § 27; Indiana, Burns' Rev. Stat. 1908, § 3982; Maryland, 1 Pub. Gen. Laws 1904, art. 21, § 67; Nevada, Comp. Laws 1900, §§ 2661, 2662; North Carolina, Revisal 1905, §§ 1003, 1004; Oregon, 1 Bell. & C. Ann. Code 1902, p. 787; South Carolina, Civ. Code 1902, § 2385; Tennessee, Code 1896, § 3753; Texas, 2 Civ. Stat. 1897, § 4621; West Virginia, Code 1906, §§ 3077, 3079; Wisconsin, Stat. 1898, § 2217, amended 1907, ch. 568.

3. In the "uniform legislation" states, the general form appears to answer for acknowledgments by married women.

### 5133. Acknowledgment by husband and wife—Wife examined separately.

STATE OF —,                    }  
COUNTY OF —,                } ss:

On this — day of —, 19—, before me personally appeared — and —, his wife, to me known to be the persons described in and who executed the foregoing instrument and acknowledged its execution as their voluntary act. And the said —, being examined separately and apart from her husband, acknowledged that she executed said instrument of her own free will, without compulsion, threats or undue influence of her said husband —.

Witness, etc.

1. See ante, vol. 4, § 3909.

2. See note 2, § 5132.



**5134. Proof made by subscribing witness.**

STATE OF —,        }  
COUNTY OF —,    } ss:

I (name and style of the officer), hereby certify that —, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and, being sworn, stated that —, the grantor, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this — day of —, 19—.

1. Statutes regarding such proof: Alabama, 2 Civ. Code 1907, § 3362; Arizona, Rev. Stat. 1887, § 2586; Arkansas, Dig. Stat. 1904, p. 1672, § 749; Georgia, Code 1911, § 4205; Mississippi, Code 1906, § 2799; South Carolina, Civ. Code 1902, § 2367 (affidavit required); Tennessee, Code 1896, § 3735; Texas, 1 Civ. Stat. 1897, Supp. 1903, art. 630; Utah, Comp. Laws 1907, § 1994.

**5135. Acknowledgment by corporations.**

STATE OF —,        }  
COUNTY OF —,    } ss:

On the — day of —, 19—, before me (title of officer), personally came —, president of the — company, who is known to me to be the person whose name is signed to the foregoing instrument, who, being by me duly sworn, deposes and says that he is president of the — company, and knows the corporate seal of said company; that the seal affixed to the foregoing instrument is the corporate seal of said company, and was affixed by order of said company, and that he signed his name to said instrument by like order as president of said company; and acknowledged that he and the said company executed said instrument as his and its free and voluntary act for the uses and purposes therein set forth.

In witness whereof, etc.

1. See Thompson on Corporations, vol. 7, forms 476-488.

2. Corporate acknowledgments are sometimes prescribed by statute: Alabama, 2 Civ. Code 1907, § 3361; California, Civ. Code 1906, § 1190; Colorado, 1 Ann. Stat. 1891, § 622; District of Columbia, Garges Code 1901, (amended 1905), § 497; Idaho, Rev. Code 1908, § 3132; Iowa, Code Supp. 1907, § 2959; Maryland, Pub. Gen. Laws 1904, art. 21, § 30, for mortgage ac-

knowledgments; Massachusetts, Rev. Laws 1902, ch. 127, § 18; Michigan, 3 Comp. Laws 1897, § 9020; Minnesota, Rev. Laws 1905, § 2684; Missouri, 1 Ann. Stat. 1906, § 913; Montana, 1 Code Ann. (Civ.) 1895, § 1610; Nevada, Laws 1908, p. 270 (compare Comp. Laws 1900, § 2648); New Mexico, Comp. Laws 1897, § 3945; New York, 4 Birdseye C. & G. Consol. Laws 1909, p. 5101; North Carolina, Revisal 1905, § 1005; North Dakota, Rev. Code 1905, § 5022; Oklahoma, Comp. Laws 1909, § 1230; Oregon, Gen. Laws 1905, ch. 55; Pennsylvania, 1 Purdon's Dig. 1903, p. 1156, § 41; South Dakota, Civ. Code 1903, § 981; Tennessee, 1903 Supp., § 3747; Utah, Comp. Laws 1907, § 1989; Virginia, Code 1904, § 2501; West Virginia, Code 1906, § 3078.

### 5136. Acknowledgment by attorney in fact.

STATE OF —, }  
COUNTY OF —, } ss:

On this — day of —, 19—, personally appeared before me —, to me known to be the person who executed the foregoing instrument in behalf of —, and acknowledged that he executed the same, as the free act and deed of said —.

1. See ante, vol. 4, § 3902.
2. For statutory requirements, see Codes.

### 5137. Acknowledgment by deputy sheriff—North Dakota.

STATE OF NORTH DAKOTA, }  
COUNTY OF —, } ss:

On this — day of —, in the year —, before me, a — in and for said county, personally appeared —, known to me to be the person who is described in, and whose name is subscribed to, the within instrument as deputy sheriff of said county, and acknowledged to me that he subscribed the name of — thereto as sheriff of said county, and his own name as deputy sheriff.

1. Rev. Code 1905, § 5022.

### 5138. Form of authentication.

STATE OF —, }  
COUNTY OF —, } ss:

I, —, clerk of the — court in and for said county, which court is a court of record, having a seal (or, I, —, the secretary of state of such state or territory), do hereby certify that — by and before whom the foregoing acknowledgment (or proof)

was taken, was, at the time of taking the same, a notary public (or other officer) residing (or authorized to act) in said county, and was duly authorized by the laws of said state (territory, or district) to take and certify acknowledgments or proofs of deeds of land in said state (territory, or district), and further that I am well acquainted with the handwriting of said —, and that I verily believe that the signature to said certificate of acknowledgment (or proof) is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court (or state) this — day of —, 19—.

1. This form has been adopted by the American Bar Association and recommended by Uniform Legislation Commission. It is in use in Iowa, Massachusetts, Michigan, Minnesota, Missouri, New Mexico and perhaps other states.

### **ACTION.**

See POWER OF ATTORNEY.

## ADJOINING LANDOWNERS' AGREEMENTS.

See PARTY-WALL AGREEMENTS.

### 5140. Agreement by adjoining owners each to build half of street.

Agreement made this — day of —, 19—, between — of —, first party, and — of —, second party.

Whereas by a deed bearing even date herewith the said first party conveyed to said second party a certain parcel of land situate on — street, adjoining certain other land still owned by said first party; and whereas the said parties have agreed to lay out and build a street leading from — street above named along the boundary line of their said adjoining parcels of land, so that one-half part in width of said street shall be upon the land of each of said parties, and shall extend so far as their said lots extend, as shown by a plan annexed hereto:

Now these presents witness that in consideration of the premises, and pursuant to an agreement to this effect between the said parties at the time of the execution of said deed, they, the said parties hereto, for themselves and their respective heirs and assigns, do agree each with the other that he will at his own expense, whenever the other shall require it, and shall actually proceed with work on his own part, build of good materials and grade in a proper manner one-half part in width of said intended street, so far as the same is coextensive with his own land; and to finish and complete said intended street in a manner acceptable to said city of —, and to maintain and keep the same in good repair and condition until it shall be formally accepted by said city; and until such time each party, his heirs and assigns shall have a free right of way over and upon said street; each to bear and pay one-half the costs and charges of making and keeping in good repair and condition any main or other sewers and drains hereafter to be made in or under the said street, so far as the same is coextensive as aforesaid.

As witness the hands of the said parties.

**5141. Agreement by adjoining owners each to build half of private way.**

Agreement made this — day of —, 19—, between — of —, party of the first part, and — of —, party of the second part.

Whereas by a deed bearing even date herewith the said party of the first part conveyed to said party of the second part a certain parcel of land situate on — street, adjoining certain other land still owned by said party of the first part; and whereas the said parties have agreed to lay out and build a private way leading from — street above named along the boundary line of their said adjoining parcels of land, so that one-half part in width of said way shall be upon the land of each of said parties, and shall extend so far as their said lots extend, as shown by a plan annexed hereto:

Now these presents witness that in consideration of the premises, and pursuant to an agreement to this effect between the said parties at the time of the execution of said deed, they, the said parties hereto, for themselves and their respective heirs and assigns, do agree each with the other that he will, at his own expense, whenever the other shall require it, and shall actually proceed with work on his own part, build of good materials and grade in a proper manner one-half in width of said intended private way, so far as the same is coextensive with his own land; and said parties do mutually agree to complete said intended private way in a manner acceptable to said city of —, and to maintain and keep the same in good repair and condition until it shall be formally accepted by said city; and until such time each party, his heirs and assigns shall have a free right of way over and upon said private way; and said parties each agree to bear and pay one-half the costs and charges of making and keeping sewers and drains hereafter to be made in or under the said private way, so far as the same is coextensive as aforesaid.

As witness the hands of the said parties.

**5142. Agreement to maintain line fence.**

This agreement made and entered into this — day of —, 19—, by and between — party of the first part, and —, party of the second part, witnesseth:

That whereas said first and second parties are the owners of adjoining farms situate in — township, — county, state of —, the division line between said farms being on the boundary line between the northeast and northwest quarters of section ten, township twenty-five, north, range eight east, in said county and state, being one hundred and sixty rods.

Now, therefore, be it mutually understood and agreed by and between the parties hereto, and in consideration of the covenants and agreements herein contained, that each of said parties shall keep up and maintain a lawful fence on said line of division for one-half the distance thereof, or eighty rods.

That said first party shall build, keep up, maintain and repair a fence on the north half of said division line, beginning at a point where said quarter-sections intersect each other on the north boundary thereof, and extending south on said line, dividing said farms and sections a distance of eighty rods, and second party agrees to build, keep up, maintain and repair a fence on the south half of said line separating said farms and said sections.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

#### 5143. Boundary agreement.

This agreement made and entered into by and between —, party of the first part, and —, party of the second part, witnesseth:

That whereas said first and second parties are coterminous owners of real estate situate in — county, state of —, each tract bounded and described as follows, to wit: (here describe land owned by each party);

That whereas there is a controversy between said parties hereto as to the boundary lines of their respective tracts of land, including in part the — — quarter of section —, township —, range —; and

Whereas said parties are desirous of settling said controversy:

Now, therefore, said parties mutually agree, in consideration

of the stipulations and agreements herein contained, that the fence now subsisting and dividing their respective tracts of land above described shall be and remain the division line of their said tracts of land irrespective as to what may be the true line that would divide said parcel of land in two equal parts lying north and south of such true division line.

In witness whereof we have hereunto set our hands and seals this — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_.

1. *Lewis v. Ogram*, 149 Cal. 305, 87 Pac. 60, 10 L. R. A. (N. S.) 610.

## ADOPTION.

### 5145. Agreement for.

This indenture made this — day of —, 19—, between — of —, first party, and —, of —, and —, his wife, second parties, witnesseth: Whereas, the said first party has two daughters, — and —, now aged — and — years respectively; and whereas the said second parties are willing to adopt the said children subject to the conditions hereinafter contained, and on the part of the first party to be observed and performed: Now this indenture witnesseth that:

1. The said second parties shall adopt the said children, and shall, until the said children shall respectively attain the age of twenty-one years, or marry under that age, maintain, board, lodge, clothe, and educate them in a manner suitable to their station, and as if they were the natural children of the second parties and shall at the cost of the second parties, and of the survivor of them, provide the said children and each of them with all necessities, and discharge all the debts and liabilities which the said children or either of them may incur for necessities, and indemnify the said first party against all actions, claims, and demands in respect thereof.

2. The said first party hereby nominates and appoints the said second parties, during their lives, and after their respective deaths the person or persons to be nominated in that behalf, as is hereinafter mentioned, to be the guardians of the persons and estates

of the said children until they shall attain the age of twenty-one years, or until they shall marry under that age, respectively.

3. The said first party shall not revoke the appointment hereby expressed to be made, and will not, by deed, will, or otherwise, appoint or apply for the appointment of any other person to be guardian of the said children or either of them, or of their respective estates.

4. In case of the death of either of the second parties before the said children shall attain the age of twenty-one years, or marry under that age respectively, it shall be lawful for the survivor of said second parties, by deed or will, to nominate and appoint any person, from and after the decease of such survivor, to be guardian of the said children or either of them.

5. The said first party shall not himself, nor shall any person claiming under him, or acting under his authority, at any time or in any manner interfere with the training or management of either of the said children, or with his or her moral, intellectual or religious education or instruction.

6. If the said first party shall not perform and observe all and every of the stipulations herein contained and on his part to be performed and observed, then and in every such case it shall be lawful for the said second parties, and the survivor of them, by notice in writing under their, his, or her hands or hand, and addressed either to the first party or to the person setting up such claim or demand, or so interfering as aforesaid, to put an end to the agreement hereby expressed to be made, and thereupon the same shall absolutely cease and determine: provided that in such event the said first party, or his estate, shall be liable to pay and satisfy all debts and liabilities incurred by or in any wise for the benefit of the said children, or either of them, which at the time of such determination of this agreement shall not have been paid and satisfied.

In witness, etc.

1. Adoption is usually statutory, and an agreement for adoption is not usual where such statutes exist; but it may be convenient to use such an agreement in case it is not practicable to make the proper application to court.



**ADVERTISING CONTRACTS.****5150. Contract for advertisement in newspaper.**

This agreement made and entered into by and between — of —, in the state of —, and — publishing company of —, state of —, witnesseth:

That in consideration that said publishing company insert the advertisement of — in the —, a daily newspaper published by said publishing company, said advertisement to occupy a space of four inches, and to be inserted one time each week for a period of twelve months, beginning with the issue of — —, 19—, for which said — agrees to pay said — publishing company — dollars in monthly payments of — dollars each month.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_

**5151. Contract for advertising space on bill-board.**

To — Bill-board Company.

I, the undersigned, authorize your company to insert my advertisement in space (here describe space) on your bill-board located at the corner of — and — streets, in the city of —, subject to change of booking, name of location of theater, for the term of one year, from the day the first advertisement appears, and to continue in force after that time until canceled by written notice delivered by me. For which space I agree to pay to your order the sum of \$— per month, payable monthly in advance.

In case of suit brought to collect any part of the consideration of this contract, I hereby agree to pay such additional sum as the courts shall adjudge reasonable as attorney's fees in such suit. No verbal understandings or conditions not specified herein will be recognized.

In witness, I hereunto set my hand and seal this — day of —, 19—.

**5152. Display advertising contract.**

— hereby contract for — advertising signs to be displayed in the automatic stereograph located at —, —, —, —, for and during the term of — months from the date hereof, for which — agree to pay the — company the sum of — (\$—) dollars on demand each month after the first display of said advertising signs.

One ordinary sign for each display hereby contracted for shall be furnished without cost by the — company, but — shall have the privilege of changing these signs as often as desired and the — company shall furnish the signs for any and all said changes, for which — agree to pay the actual cost price in addition to the above-stipulated sum. The — company guarantees that this cost shall not exceed one dollar for each ordinary color sign and shall not exceed seventy-five cents for each ordinary black and white sign: provided, however, that in all cases where special signs are required, such as photographs of special objects, etc., the above guarantee shall not prevail, but same shall be billed and paid for by — at actual cost.

The — company hereby agrees that each advertising sign hereby contracted for shall be displayed in the said automatic stereograph at the location above named at intervals of not more than nine minutes from dusk until midnight of each day during the term of this contract.

The display of signs hereby contracted for may be discontinued at the election of said — company, after sixty days' written notice, provided said — company is compelled to vacate the said location to permit the construction of a new building on said site as provided in its lease of said location.

Signed this — day of —, 19—.

————— company,  
By ———.

**5153. Advertising contract—Newspaper.**

To the — publishing company, —.

You are hereby authorized and requested to publish for the undersigned in the —, a daily newspaper printed and published in the city of —, state of —, for and during a period

of — years from date, display advertising as follows: (here state number of lines and in what editions the advertisement is to run), for which we agree to pay you — cents per line for regular insertions in week-day editions, and — cents per line for extra insertions in the Sunday editions, aggregating at the net price of not less than — dollars.

All bills for advertising under this contract are due upon presentation, and payable at the office of — publishing company.

It is expressly understood and agreed by the advertiser that the reduced price at which this contract is made is based upon condition that the advertiser shall use the advertising space at the time and in the quantity contracted for, and if the advertiser shall not use the space as specified the advertiser shall pay for all space used under this contract up to the time of cancellation at the rate named, according to the — publishing company's schedule of rates in effect at time of cancellation.

The — publishing company reserves the right to cancel this contract at any time, in which event the advertiser shall pay for all space used at the rates herein stipulated.

The advertiser shall have the privilege of canceling this contract at any time by paying the — publishing company's schedule of rates in effect at the time of cancellation.

It is expressly understood and agreed that the — publishing company shall not be held liable for any errors in any advertisement published under this contract, unless the proof of such advertisement is returned to the — publishing company, and in that case it shall be liable only for those errors noted thereon in writing which shall not have been corrected. The liability of the — publishing company shall not exceed a sum bearing the same proportion to the charge for the whole advertisement as the space of the noted error bears to the whole space occupied by the advertisement. No claim shall be made unless notice of error shall be given the — publishing company not later than — of day of publication.

The — publishing company reserves the right to revise or reject, at its option, any advertisement which it deems objectionable in subject-matter or phraseology, or detrimental to its business.

When a contract stipulates fixed space to be used on specified days or a specified space per week the — publishing company is authorized to insert the last copy published until new copy is furnished.

Signed by me at —, this — day of —, 19—.

#### 5154. Contract to paint and display advertisement.

To the — company, of —.

Gentlemen: You are hereby authorized and directed to paint our advertisement on the following locations: —, —, —.

It is understood that you are to paint the display after sketch and color scheme approved by us and to maintain the display for a period of — months, for which we agree to pay you the sum of — dollars (\$—) per month, payable monthly.

It is understood that you are to repaint the display about — months from the date of the completion of the first painting and each — months thereafter.

If any of the above locations are lost from view during the contract period, you are to replace such losses in other locations subject to our approval.

Yours very truly,

\_\_\_\_\_  
\_\_\_\_\_

Date: — .

Salesman, \_\_\_\_\_.

Accepted: \_\_\_\_\_, Manager.

#### 5155. Contract for street car advertising.

\$— per month.

—, —, 19—.

We hereby authorize the — company to place our advertisement in — cars of the — for — months from —, 19—, size of cards 11x21 inches, for which we agree to pay the sum of — \$—, payable as follows: \$— on the last day of — 19—, and \$— on the last day — of each succeeding month during the term of this contract.

If through the advertiser's act or omission the placing of the

cards in the cars is delayed the — company may, at its option, treat the contract time as commencing from the date the cards are actually placed in the cars, and to continue for the full term of months thereafter. The omission of any reasonable number of the advertiser's cards from the cars shall not constitute a violation of this contract; but may be made good by additional service, and if not so made good, the advertiser shall be entitled to a pro rata rebate for any such cards as may be omitted. And this contract is not binding upon the — company until approved by its president; and it is subject to the approval of the — company, in whose cars the above advertisements are to be placed.

Dated and signed by us this — day of —, 19—.

#### 5156. Service agreement for advertising.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That first party, in consideration of the covenants and agreements hereinafter made and the sums stipulated to be paid, does hereby agree to place all the newspaper, magazine, agricultural, trade paper, street car, poster and paint advertising of the second party for and during the period of one year from the date hereof.

The first party further agrees to carefully study the second party's opportunities for sales, gather and analyze the necessary data and then submit to the second party the best plan to follow in such advertising.

Upon second party's approval of said plans, estimates and schedules so submitted, first party agrees to prepare the text matter for all such advertisements; issue instructions to designers, printers and plate makers; outline and prepare the text matter and specifications for all follow-up literature necessary to round out second party's advertising scheme; conduct the necessary negotiations with publishers, street car companies, bill posters, sign painters, engravers and printers, and at all times be ready to confer with second party and give him the benefit of first party's advice on all matters pertaining to the selling problems in his business.

It is further mutually understood and agreed by the parties hereto that all the text matter furnished by first party for printed matter on which second party places his order direct, first party will charge him for the copywriter's time, but in such cases first party is to take no responsibility as to the services rendered by the printer. And no expenditures are to be incurred without first being approved by both parties hereto.

In consideration of all the above-mentioned services to be performed by the first party, the second party hereby agrees to pay to first party the sum of \$——, payable —— days after date thereof.

In witness whereof, the parties have hereunto set their hands and seals this day and year above written.

## AGENCY CONTRACTS.

### 5160. Agreement between retailer and branch store, agent or commission company.

This agreement, made this — day of —, 19—, between — of —, hereinafter called the company, and — of —, hereinafter called the retailer, witnesseth:

The said company agrees to furnish the following kinds of goods to said retailer (here state kind of goods) at —, in —, for a period of — years from date, for the purpose and with the object that said retailer shall become said company's agent to sell, vend, and dispose of the same in accordance with, and in consideration of stipulations and terms hereinafter following:

Said retailer shall carefully deposit and preserve, in the shop, warehouse or store, used for the purpose of said retail business at the time, all such goods, wares and merchandise as may be furnished him by said company hereunder.

In managing and conducting said agency, said retailer shall use his best endeavors and skill to procure the greatest possible sale of all such goods which he shall be employed to sell, either for cash or upon credit to persons of responsibility.

In selling upon credit, said retailer shall be circumspect and cautious, make due inquiries from reliable and respectable persons as to the solvency of purchasers, and shall not sell to insolvent persons. No credit shall be given at any time to any person for a greater length of time than —, or for a greater amount than — dollars, without the consent of said company.

In conducting said agency, said retailer shall conform to and be governed by such orders, instructions and directions as he may from time to time receive from the company. In case he shall receive no such orders, instructions or directions he shall act in such manner as he may believe to be most advantageous to the company. He shall account for all goods and transmit to the company all moneys, notes, bills and securities received from the sale of goods at the end of each month, and without further de-

mand. He shall keep books of account in which he shall enter all goods received from the company and all goods sold; to whom; whether for cash or credit, and any other matter or thing which in any wise might concern said agency. He shall preserve all books of account, documents, papers, and writings concerning said business in a fire-proof safe, to be provided by —; and in case of final adjustment he shall deliver all the same to said company.

On the — day of — of each and of every year (unless said day shall be Sunday, and in that case on the day following) he shall take stock, make an inventory of all the stock on hand, and accurately balance up all books of account so that the state and condition of said agency shall appear clearly therefrom.

Said retailer shall, out of said commission (salary or wages), provide a clerk who writes a good hand and understands accounts and bookkeeping, for the purpose of constantly assisting him in the management of said business.

Said company or any agent appointed by it shall at all seasonable hours of business days have free access to said books, papers, documents and writings concerning said agency business and the right to take copies and extracts from the same.

In consideration of the true and faithful performance of the covenants herein contained the said company shall pay quarterly or cause to be paid unto said retailer the following: (here state wages, salary or commission).

All expenses relating to the conducting of said business, transportation charges, light, heat and water rent, store-room rent, sprinkling streets, etc., shall be borne as follows: (here set out).

Said retailer shall not be answerable for any loss or damage which may happen to any goods or merchandise sent him during transit, or before the same came into his care and custody; nor for any loss or damage which may happen to the same after coming into his hands and custody, or to goods which shall be sent by said retailer to any customer through any of the usual means of delivery, unless said retailer shall have occasioned such loss wholly or partly through his own neglect, and the remedy against the proper party is thereby made so uncertain that the



loss cannot be recovered. For any loss or damage which may happen to goods or merchandise committed to his charge or care said retailer shall be answerable if the same happens through his neglect, omission, or wilful mismanagement.

Said retailer shall advertise in a paper published in his town, as follows: (here specify); shall use the best of his ideas to put his goods before the public and shall post on bill boards ads. as follows: (here specify), and the expense of such advertising shall be shared equally by said retailer and the company.

Said retailer shall devote his whole time and attention exclusively to said agency, and shall not engage in any other business whatsoever nor as a competitor of the company, either on his own account or as agent, and either alone or in partnership with any person or persons whatsoever.

Said retailer shall carry on and conduct said business at No. — street in —, or in such other store in —, as the company may appoint or direct for that purpose.

All such sums of money as said retailer may have necessarily laid out for stationery, paper, books, files, postage, etc., made use of in said agency business, shall be borne by — (state whom.)

It is further mutually agreed that said relation may be terminated at any time by either party on giving the other party one month's notice in writing, except in case of breach, when the rights of such delinquent hereunder shall be forfeited absolutely.

And upon any breach hereof said retailer shall forthwith turn over to said company, or its agent, successor or assigns, all moneys, bills, securities, books of account, papers, writings, stock of goods, possession of said place of business, and all other things pertaining to, or concerning said business. To that end said retailer shall give said company his bond, with acceptable sureties, executed in the penal sum of — dollars, conditioned to be void upon compliance with the terms of this contract.

In witness, etc.

1. See generally, ante, vol. 4, § 2900 et seq.

2. As to notice of revocation, see ante, vol. 1, § 461 et seq.

**5161. Contract between manufacturer and dealer of automobiles.**

Agreement made this — day of —, 19—, by and between the — Motor Manufacturing Company, a corporation organized and existing under the laws of the state of —, having its principal office and place of business at —, —, hereinafter called the manufacturer, and —, of —, hereinafter called the dealer, witnesseth:

First—The dealer hereby agrees to buy from the manufacturer, and the manufacturer hereby agrees to sell to the dealer, complete cars or chassis as follows:

Model	Number of Cars	19—					19—						
		Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mch.	April	May	June	July

Second—(A) All to be delivered by the manufacturer, free on board cars, at —, —, and to be accepted and paid for by the dealer between the date of this agreement and the — day of —, 19—.

(B) The dealer agrees to furnish the manufacturer detailed specifications for each of said cars — (—) days prior to the specified date of delivery, and further agrees that all deliveries hereunder shall be subject to prior orders and to causes beyond the reasonable control of the manufacturer.

Third—The manufacturer agrees to allow the dealer a discount as per attached schedule from the list or catalogue prices of its motor cars and chassis, and a discount of — per cent. (—%) from the list or catalogue prices of such parts and accessories, manufactured by the manufacturer as the dealer may from time to time order, except such parts as are listed at a net price.

Fourth—(A) The dealer herewith deposits with the manufacturer a sum of money on account of the cars or chassis above purchased as follows:

Upon each and every car — dollars (\$—), making a deposit on the — cars purchased of — (\$—).

(B) This deposit shall be held by the manufacturer as a guaranty for the faithful performance of this agreement by the dealer, and shall be applied as part payment upon the — motor car or chassis above purchased, in the following manner:

— dollars (\$—) of which, in case the dealer shall not be indebted to the manufacturer on any account, and not otherwise, shall be applied as part payment of each car above purchased as and when the same shall be shipped by the manufacturer.

(C) The dealer further agrees to remit with the specifications for each

car or chassis ordered shipped hereunder the sum of — dollars (\$—), and to pay the balance of the purchase-price thereof F. O. B. factory (less the sum of — dollars (\$—) above mentioned if applied as hereinbefore provided) on receipt of notice from the manufacturer that said car or chassis is ready for shipment, or at the option of the manufacturer by sight draft with bill of lading attached.

(D) The price of all motor cars, chassis, equipment or parts sold by the manufacturer to the dealer shall be F. O. B. —, —.

(E) The manufacturer agrees to pay the dealer interest at the rate of — per cent. (—%) per annum upon the sum paid by the dealer as partial security for the performance of this contract, and upon any part thereof from time to time remaining in the hands of the manufacturer; that such interest shall be computed on the first of each month upon the amount then remaining in the hands of the manufacturer, and shall be payable semi-annually on the first day of — and the first day of —, 19—.

(F) It is further mutually understood and agreed that in the event of the manufacturer's failure to deliver the full number of cars specified in this contract prior to —, 19—, the liability incurred by said manufacturer on account of such failure shall be limited to the sum of — dollars (\$—) for each car not so delivered under the terms of this contract upon which the manufacturer has received and accepted shipping specifications accompanied by the additional payment hereinbefore provided for, and that in the event the dealer shall not accept and pay for the number of cars specified in this contract prior to —, 19—, the liability incurred by such failure shall be limited to the sum of — dollars (\$—) for each car not accepted by the dealer under the terms of this contract.

(G) It is further mutually agreed that the guarantee adopted by the National Association of Automobile Manufacturers shall apply to — cars, and that all orders for cars received from the dealer in addition to those hereinbefore specified which shall be accepted by the manufacturer shall be governed by the provisions of this agreement.

(H) The manufacturer shall make an extra charge for crating, packing or taking automobiles apart for the purpose of shipment.

Fifth—(A) The dealer agrees to assume all risk of any loss of, or damage to, cars, chassis, bodies, parts or accessories after the same are delivered in good order to the transportation companies by the manufacturer, whether such cars, chassis, bodies, parts or accessories are paid for or shipping C. O. D. or on draft against bill of lading or otherwise.

(B) The manufacturer shall not be responsible for any delays or damages, due to strikes, fires, floods, accidents, or any other causes beyond its control.

Sixth—(A) The manufacturer agrees not to sell any new — motor cars or chassis to any person in the following territory, viz.: — except to the dealer, between the date hereof and —, 19—, and to refer inquiries for such cars and chassis from any person within said territory to the dealer during said period.

(B) The dealer shall use all reasonable effort to sell within said territory motor cars made by the manufacturer, and to promote and protect the good

name of the — motor car throughout said territory from the date of the signing of this agreement until its termination.

(C) The dealer shall not solicit or accept orders for, or sell or deliver, any — motor car or chassis outside of the territory above described without the written consent of the manufacturer first obtained in each instance.

(D) The dealer shall appoint no subdealer or representative for selling — motor cars in said territory without first obtaining the consent in writing of the manufacturer, and any appointment so made must be upon terms approved by the manufacturer, and an exact copy of agreement with subdealer or representative shall be immediately filed with the manufacturer.

(E) The manufacturer is hereby authorized to settle all territorial disputes between dealers on any points arising from the sale of its cars, and the decision of said manufacturer shall be final.

Seventh—(A) The dealer agrees to send to the manufacturer the names and addresses of all purchasers of — cars sold in said territory as soon as such sales shall be made, and will not sell or offer for sale any car or cars, part or parts for less than their list or catalogued prices as fixed by the manufacturer.

(B) The dealer agrees during the term of this contract to provide ample facilities for promptly handling and properly repairing and adjusting, at reasonable charges, all cars sold within the agreed territory as the purchaser thereof shall request, and at all times to employ at least one workman who shall thoroughly understand the different types or styles of the — motor cars, and be specially conversant with the means of adjusting and repairing the same, and to keep on hand in good repair and condition for use, at least one — car for exhibition and demonstrating purposes.

Eighth—(A) All accounts for parts and accessories ordered by the dealer shall be due and payable on the — of each month for goods shipped during the preceding month. And in case such accounts are not paid in accordance herewith, it is understood that the manufacturer shall make further shipments of parts and accessories to said dealer C. O. D. or S. D. B. L., until such account is paid or satisfied.

(B) All parts made by the manufacturer and sold to the dealer, whether assembled in the motor cars hereby purchased or ordered separately hereafter, and claimed by the dealer to be defective, must be returned, charges prepaid to the manufacturer for examination and inspection. The decision of the manufacturer in all cases of claims shall be final and conclusive. Claims on account of defective parts not made by the manufacturer shall be against the makers thereof only.

Ninth—(A) It is specifically understood and agreed that the title to the motor cars, repair parts and extra equipment sold hereunder and not fully paid for shall remain in the manufacturer until paid for in full by the dealer, and in case this contract is terminated by limitation or in any other manner whatsoever and the dealer then owes money to the manufacturer for said motor cars, repair parts or equipment, the dealer hereby authorizes the manufacturer or its agents, without notice, to enter his or its premises and remove such cars, repair parts or equipment as will satisfy dealer's indebtedness.

Tenth—The dealer is not in any manner authorized or empowered to act

as agent for or to conduct business in the name or for the account of the manufacturer, or in its name or upon its behalf to make any promises or representations with respect to goods or any other matter.

Eleventh—It is specially understood and agreed that this contract cancels, annuls and supersedes any and all contracts between the parties, and as a further consideration for the making of this contract the dealer hereby releases and forever discharges the manufacturer of and from any and all claims or liability for loss and damage of any kind, nature and description, which the said dealer has suffered or may suffer by reason of a prior contract with the manufacturer.

Twelfth—(A) If the dealer shall violate or fail or neglect to perform any agreement herein, or in any other memorandum of agreement now made, or which may be made hereafter between the dealer and the manufacturer relative to the purchase and sale of new — motor cars or chassis, on his part to be kept or performed, or shall fail to pay when due for any work performed, or merchandise, or motor car parts sold to the dealer by the manufacturer, the manufacturer may, at its election and without waiving or affecting any of its then existing rights against the dealer, treat this agreement as canceled and terminated, and upon mailing to the dealer at his place of business written notice of its election, all the rights of the dealer under or in any way arising out of this agreement shall at once terminate and the agreement be canceled.

(B) It is further mutually understood and agreed that in case, in the judgment of the manufacturer, the financial condition of the dealer shall become so impaired as to render it undesirable for the manufacturer to sell its product through the dealer, then the manufacturer may, at its option, cancel and annul this contract for said reason by mailing to the dealer at his place of business a notice in writing to that effect.

(C) The dealer shall not transfer or assign this agreement, or any part thereof, nor any rights or benefits accruing thereunder, without the written consent of the manufacturer first obtained.

Thirteenth—It is specifically understood and agreed that all territorial and other rights hereby granted to the dealer have reference to, and connection with, no article or merchandise that is or may be manufactured or sold by the manufacturer, except the — motor cars or chassis hereby purchased.

Fourteenth—This agreement expires by limitation —, 19—.

In witness whereof, we have hereunto set our hands this — day of —, 19—.

— Motor Manufacturing Company,  
(The Manufacturer.)

\_\_\_\_\_,  
Salesman.

By \_\_\_\_\_,  
Sales Manager.

Approved:

\_\_\_\_\_,  
President.

\_\_\_\_\_,  
(The Dealer.)

By \_\_\_\_\_.

**5162. Agreement by factor to sell goods abroad.**

Agreement made this — day of —, 19—, between — of —, hereinafter called the principal, and — of —, hereinafter called the agent, witnesseth:

Whereas said principal is about to ship several cargoes of goods to the port of —, and has intrusted the same to the care of the said agent to sell and dispose of, now it is hereby agreed as follows:

1. Said agent agrees with said principal that he will sell and dispose of all such merchandise as said principal shall consign to him, to the best advantage and for the most money that he can obtain for the same, and will forthwith remit the proceeds of any and all sales to said principal, or to such other person as he shall from time to time direct, subject to the deductions hereinafter expressed.

2. Said agent agrees to render to said principal just and proper accounts of any and all sales effected by him, and of all sums received and paid by him in respect to such goods, and to keep such accounts in proper books, which books shall be deemed the property of said principal.

3. Said agent agrees not to act for any other person, firm, or corporation, or to purchase or receive for sale any goods either in his own name and for his own account, or in the name or on account of any other person, firm, or corporation during the continuance of this agreement.

4. Said principal agrees to allow said agent to retain out of the proceeds of the sales to be made by him a commission at the rate of — per cent. on the gross amount of sales, and also all necessary, customary or other reasonable expenses attending the shipping, unloading, cartage and freight of said cargoes, or attending the sales thereof.

5. It is mutually agreed that said principal shall at all times be at liberty, either personally or by agent duly authorized by him, to inspect and carry away all or any part of said goods remaining unsold, wherever the same may then be, and all books of account kept by the said agent as above provided, and all securities, documents, vouchers and writings held by him relating

to his agency; or to make and carry away any copies of or extracts from such books and writings.

In witness, etc.

1. As to factor contracts, see ante, vol. 4, § 2900 et seq.

### 5163. Agreement with real estate broker to sell property.

This agreement, made this — day of —, 19—, between — of —, hereinafter called principal, and — of —, hereinafter called the agent, witnesseth:

That said principal has this day placed with said agent, for sale, the following real estate of which said principal is the owner in fee simple, located in the township of —, county of —, state of —, and described as follows: (Here insert description.)

Said agent shall have the agency to sell said property for a period of — months from date, at the stipulated price of — dollars. If said agent shall sell said property for said price, or some lower price which said principal may authorize him to accept, then said agent shall receive a commission of — per cent. on said sale. If said agent shall sell said property for more than the price above named, said principal hereby agrees to divide such excess, half and half, with said agent in addition to his commission.

In witness, etc.

1. Some states require such an agreement to be in writing, in which event the statutory requirements must be met.
2. See also, ante, vol. 4, §§ 2901, 2907.

### 5164. Agreement with real estate agent to sell property—Another form.

To —:

In consideration of your endeavor to secure a purchaser for the property described on the reverse side hereof, I hereby grant and give you the sole and exclusive right for the period of six months from this date to sell the same at the price and upon the terms stated hereon, or at any other price, terms or consideration to which I may consent. I obligate myself to use my best efforts in every particular to induce any sale offered by you.

In case you procure a purchaser for said property, or if the same or any portion thereof is sold by you or any other person, during the term of this contract, or within three months after its expiration, if to a purchaser to whom the same had been presented by you before such expiration, I hereby promise and agree to pay you for your services a commission of — per cent. of selling price, without relief from valuation or appraisement laws. Exclusive privilege is granted to place your sign on the property.

Dated —, 19—.

Accepted —.

———, Owner.

### 5165. Standard form adopted by a real estate board.

To —, member — Real Estate Board.

In consideration of your endeavor to secure a purchaser for the property described below, I hereby grant and give you the sole and exclusive right for the period of six months from this date to sell the same at the price and upon the terms stated hereon, or at any other price, terms or consideration to which I may consent. And as a part of the consideration hereof you are to list and register said property with the — Real Estate Board, subject to and in accordance with the rules, regulations and by-laws of said board. I obligate myself to use my best efforts in every particular to induce any sale offered by you.

In case you procure a purchaser for said property, or if the same or any portion thereof is sold by you or any other person, during the term of this contract, or within three months after its expiration, if to a purchaser to whom the same had been presented by you, or by any member or representative of the — Real Estate Board, as evidenced by the records of said board, before such expiration, I hereby promise and agree to pay you for your services a commission to be determined in accordance with the rates as adopted by the said — Real Estate Board, without relief from valuation or appraisement laws. Exclusive privilege is granted to place your sign on the property.

Date —, 19—.

Accepted —.

———, Owner.

Location —.

Description —. Price —.



**5166. Appointment of agent by common carrier.**

(Full name of carrier.)

Date, ———, 19—.

Know all men by these presents: That the ——— (name of carrier) has made, constituted and appointed, and by these presents does make, constitute and appoint ——— (name of appointee) its true and lawful attorney and agent for the said company, and in its name, place, and stead to file passenger fare schedules and supplements thereto, as required of common carriers by the act to regulate commerce and by regulations established by the Interstate Commerce Commission thereunder, for the period of time, the traffic, and the territory now herein named: (here insert). And the said ——— (name of carrier) does hereby give and grant unto its said attorney and agent full power and authority to do and perform all and every act and thing above specified as fully, to all intents and purposes, as if the same were done and performed by the said company, hereby ratifying and confirming all that its said agent and attorney may lawfully do by virtue hereof and assuming full responsibility for the acts and neglects of its said attorney and agent hereunder.

In witness whereof, the said company has caused these presents to be signed in its name by its president and to be duly attested under its corporate seal by its secretary, at ———, in the state of ———, on this ——— day of ———, 19—.

The ——— Company.  
by ———, its President.  
—————, Secretary.

(Corporate Seal)

1. As to agent's covenant with principal not to engage in competing business see ante, vol. 2, § 832.

**5167. Contract between manufacturer and traveling salesman.**

This agreement, made this ——— day of ———, 19—, between ——— of ———, hereinafter called the manufacturer, and ——— of ———, hereinafter called the traveling salesman, witnesseth:

Said manufacturer hereby employs said traveling salesman for a period of ——— years in consideration of the following promises and agreement:

Said traveling salesman shall enter the employ of said manu-

facturer for said term, and devote his entire time and attention to said service. He shall not handle or sell any goods, wares or merchandise excepting those of said manufacturer. He shall report his sales daily, if possible, and at least three or four times a week. He shall not make collections from customers unless specially authorized and instructed to do so by said manufacturer.

On the other hand, said manufacturer shall pay said traveling salesman a salary of ——— dollars per week, and he shall pay all expenses incurred in the performance of such duties as traveling salesman so long as the same do not exceed ——— dollars per week. Also when a sale is made by said traveling salesman which shall exceed in the aggregate ——— dollars per week said manufacturer shall pay him a commission on all orders obtained, accepted and filled above that amount.

It is further mutually agreed between the parties hereto that the territory within which said traveling salesman shall travel shall be as follows: (here insert limits of territory). But said territory may be changed by said manufacturer in his discretion.

Said traveling salesman shall not be entitled to commissions on goods which may be refused by the consignees without cause. If commissions have been paid on shipments so refused or returned, said manufacturer may deduct such amounts from the next payment to said traveling salesman.

This agreement may be canceled or revoked at any time if said traveling salesman fails to perform his duties diligently, or fails to be temperate and honest, or fails to account for all transactions had by him as such salesman.

In witness, etc.

#### **5168. Appointment of agent as sole vendor of patented article.**

Agreement made this ——— day of ———, 19—, between ——— of ———, as principal, and ——— of ———, as agent. Whereas the said principal has lately invented and obtained letters patent for a certain ———, and is desirous of introducing the same to public notice and patronage, and has agreed to appoint the said ——— to be his sole agent for that purpose, upon the terms hereinafter expressed:

Now, therefore, in consideration of the premises and the ad-

vances to be made by the said agent, said principal hereby agrees that he will henceforth, for the space of — years now next ensuing, weekly and every week consign unto the said agent at — such quantity of the said patented article as shall amount in value, according to the current price of the same, to the sum of — dollars; said agent paying the freight of each consignment; and will also consign such additional quantity as the said agent may from time to time require, and said principal may be able to supply him.

The said principal further agrees that he will not, during the said term, sell the said articles to any other person, or appoint any other agents whomsoever to sell the same on his account, without the written consent of the said agent; but that all orders for the said articles, whether the same shall be obtained or procured by said principal individually, or by any person or persons authorized by him for that purpose, shall be transmitted to and executed by the said agent during the said term: provided such orders be executed by the said agent with due despatch, and upon the same terms and conditions, with respect to the persons or agents procuring the same, as such orders have hitherto been fulfilled by the said principal.

The said principal agrees to allow the said agent a discount, at the rate of — per cent., on the market-price of such articles as shall be consigned to him by virtue hereof.

The said agent hereby agrees to take immediately from the said principal such quantity of said manufactured articles as shall amount to the sum of — dollars, and to pay for the same upon delivery; he also agrees that he will weekly, henceforth, take such quantity of said goods as the said principal shall consign to him, not exceeding the sum of — dollars, according to the terms hereof.

That he will on Wednesday of each week hereafter remit to the said principal drafts or acceptances payable not more than — days after the date thereof, for the price of the goods that shall have been consigned to him during the preceding week, without any deduction whatsoever except the discount above provided for.

The said agent agrees to use his best endeavors and utmost

exertions to introduce the said goods to public notice and patronage, and to bring them into general use.

The said agent will bear and pay all losses, damages, debts and liabilities incurred or contracted by him, or his agents or servants, in and by the sale of the said goods, and all costs and expenses whatsoever of advertising, circulating and selling the same, and every other expense whatsoever relative and incidental thereto; and all losses, damages, and expenses whatsoever attending the carrying of said goods, after they shall have been delivered by the principal to the carrier appointed by the said agent to receive the same.

If the said agent shall, during the said term, exert himself to the best of his power, skill and judgment to introduce the said goods to public notice and patronage, and to bring them into general use, and in all other respects conduct himself in a fit and proper manner as such sole agent, he, the said agent, shall, at the expiration of said term, have the option either of continuing his agency for the further term of — years thence next ensuing upon the same, upon the like terms and conditions as are hereinbefore expressed, or as near thereto as circumstances will permit, or of then, or at any time thereafter during the further term of — years, becoming a partner in the said business upon equal terms with the said principal upon payment to him of the sum of — dollars.

Each of the said parties, on nonperformance or misperformance of the agreements herein contained, shall pay unto the other of them the sum of — dollars, as and for liquidated damages between them, such sum to be recoverable by action at law.

In witness, etc.

#### 5169. Insurance agency contract.

This contract, made and entered into this — day of —, 19—, by and between the — Insurance Company of —, first party, hereinafter designated the company, and — of —, county of —, state of —, second party, hereinafter designated the agent, witnesseth:

That in consideration of the mutual covenants hereinafter set forth, the parties hereto have agreed and do hereby agree, as follows :

1. The said company hereby appoints the said second party its sole and exclusive agent, with such powers and authority as are granted herein only, for the territory hereinafter designated for the purpose and with the authority of procuring and effecting personally and through subordinate agents in such territory, applications for insurance on the lives of individuals that shall be satisfactory to said company, and forwarding said applications to said company for approval or disapproval; and to collect at the time of securing said applications, or upon the delivery of policies, first year premiums and such other premiums or collections as said company may authorize by the furnishing to said agent of the regular receipts of the company, bearing the signature of the president or secretary of the company for such other premiums or collections.

2. The territory hereby assigned to said agent shall comprise — and such other territory as may be hereafter assigned by said company in writing to said agent during the continuance of this contract, provided, however, that this contract is made subject to the condition that said company is now, or may become, and continues to be legally authorized to transact the business of life insurance in said territory, and should such authority be at any time revoked or otherwise terminated, the said company having used its influence to have said authority continued as to any part or all of said territory, or should any law now in force, or hereafter enacted, or should any ruling of any insurance commissioner or other authority be against the sale of insurance by said company on the plan or plans now employed or hereafter adopted by said company, then this contract shall, at the option of said company, immediately cease and terminate as to the territory and as to the plan or policy affected by such enactment or ruling, except as to such compensation as shall be or become due to said agent on account of any insurance issued by said company under the terms of this contract prior to such revocation or termination; and when, by the laws of any state or territory covered by this contract, the full preliminary term method of valuation is modified, then the first year commission paid on any policy affected by such law shall be reduced from the schedule shown herein, by an amount equal to the first premium required to produce the pure endowment provided for by said modified preliminary term method of valuation. Said agent shall, at all times, fully comply with such laws as are now in force or may be hereafter enacted governing the sale of insurance or the actions of said agent, and shall also comply with all rulings of the insurance commissioner or others of similar authority in said territory, and upon any failure to comply with any law, or ruling as above mentioned, the said company shall be held free from harm by said agent.

3. The said company agrees to allow as full compensation to said agent for all his services and for the fulfilment, all and singular, of the terms of this contract, a brokerage commission on all of the first year's premiums and a renewal commission on subsequent years' premiums, in accordance with the following schedule on all policies of insurance enumerated in said schedule that are issued by said company on account of applications re-

ceived from said agent, when such premiums are actually received in cash by said company direct from the insured or are paid to said company by the said agent in the manner hereinafter provided, but the renewal commissions provided for in this contract shall be allowed or paid only so long as the said agent remains actively in the service of said company under this contract.

SCHEDULE :

(The said company reserves the right to modify or withdraw or discontinue the issuance of any of the policies hereinafter enumerated.)

(1) Twenty payment life — % of first year's premium, — % of subsequent premiums.

(2) Whole life nonparticipating — % of first year's premium, — % of subsequent premiums.

(3) Twenty year convertible term — % of first year's premium.

(4) Twenty year endowment annual dividend — % of first year's premium, — % of subsequent premiums.

(5) Whole life (monthly income) — % of first year's premium, — % of subsequent premiums.

(6) — and on all other forms of policy or bond contracts issued by said company and not enumerated above, the commission shall be such as shall be designated in writing by said company. Whenever the said agent shall effect insurance upon the life of any individual in excess of the amount of risk carried by the company according to its then rules, the commission upon such excess shall be in accordance with the above schedule less the first year's premium paid by said company for the reinsurance of such excess.

4. In computing renewal commissions there shall be deducted from the amount of the premiums upon which said renewals are based any dividends, coupons or other credits that could be used by the insured in reducing, or in part payment of said premiums whether said credits are so used or not, and that the amount of renewal commission shall be computed upon the amount of the premium less such deductions. No commission shall be paid or allowed on interest that shall have accrued or which shall be paid on any premium or premium note nor on any application on which any policy or policies shall have been issued, when such policy or policies receive credit from any existing policy or policies then in force in said company except as the same may be calculated and determined by said company.

5. The said agent agrees that the total amount of applications for new insurance procured and furnished to said company hereunder during the first three months from the date hereof upon which policies are issued by said company and upon which one full year's premiums are duly paid and received by said company in cash in accordance with the terms of this contract, shall amount to not less than — thousand dollars, (\$—), of insurance, and that the minimum amount of applications for new insurance procured and furnished to said company by said agent hereunder for each subsequent period of three months shall likewise be not less than — thousand dollars, (\$—), and that if a less amount of insurance is issued than the amount stipulated above for any one of the said periods, that said company shall have the option to terminate this contract and in such event, all the rights of said agent shall thereupon cease and determine.

6. Said agent shall not act directly or indirectly as agent for any other life insurance company, association, society or agent, and shall comply with all instructions of said company in all matters pertaining to the business of said company; all books of account, documents, vouchers and other books and papers connected with the business of said company shall be the property of said company whether paid for by said company or not, and shall, at all times, be open to said company or its representatives for the purpose of examination and shall be turned over to said company or its representatives on the written order of said company or upon the termination of this contract.

7. The said company agrees to supply all rate books, printed forms, stationery and advertising matter which it may deem necessary for the use of said agent, and said agent shall not issue, or cause, or allow to be issued, any written or printed matter bearing the name of said company or any of its officers, or purporting to be issued by said company or showing said company's system of transacting business, without first submitting the same to the home office of said company and obtaining the written approval of said company; and no expense or liability of any nature shall be incurred by said agent in the name of, or on behalf of said company except by its express written authority.

8. The authority of said agent shall extend no further than is herein stated; the said agent shall not, on behalf of said company, make, alter or discharge contracts, waive any forfeitures, waive payment in cash, extend the time of payment of any premium, accept payment of any past due premium, extend any premium note or approve evidence of good health; and the said agent shall not, on behalf of said company, receive any money due or to become due said company except on applications obtained by or through said agent, or in exchange for conditional receipts, or on policies sent said agent for delivery, or on renewal receipts for renewal premiums not past due, signed by the president or secretary of the company and sent said agent for collection; and the said agent shall not be entitled to any reimbursement for any expense incurred beyond that herein provided.

9. The said agent agrees to assume active charge of said territory and commence actively the writing of insurance immediately after the execution of this contract, and agrees to appoint such subordinate agents, for whose fidelity and honesty said agent shall be responsible to said company, as shall be for the best interests of said company, and to continually make such additions thereto as may be best calculated to establish and promote the efficiency of an agency force in said territory and extend the business of said company; all such subordinate agents shall be the subordinate agents of said second party to this agreement, subject to appointment and removal by said second party, and they shall look to said second party alone for compensation, and the appointment of all such subordinate agents shall be evidenced by a written contract between said second party and each of said subordinate agents, copies of which said contracts shall be filed with said company and shall plainly show that said company assumes no obligation to and has no jurisdiction over said subordinate agents except as it acts through said second party, and all said subordinate agents or any other employees of said second party are to be paid by said second party from the

compensation of said second party provided for herein. The said agent agrees to be responsible to said company for all moneys collected by or passing through the hands of all subordinate agents or other persons employed by said agent and to the public for the acts of such agents or such other employés and will save the said company harmless from all claims by reason of the acts of such subordinate agents or such other employés, and said agent also agrees to cancel or revoke the appointment of any subordinate agent or other employé appointed by said agent, on demand of said company.

10. The said agent agrees to pay over to said company at its home office, or such other place as may be designated by said company, all premiums and all other sums of money collected in said territory for said company immediately upon the collection or receipt thereof, it being understood that said agent is acting in a fiduciary capacity and that said agent shall hold securely all moneys belonging to said company in trust separate and distinct, and in no case whatever to make any personal or other use of such funds; and that said agent shall have no offset of any kind for withholding or misappropriating any moneys for any premiums collected and shall return at the proper time, or on demand, to said company, all uncollected premium receipts or undelivered policies sent to said agent for delivery; and the said agent agrees to make any and every report in connection therewith or any other report required by said company, and it shall be the duty of said agent, and said agent agrees, to pay over to or remit the amount due said company on each application at the time of forwarding said application to said company if the premium shall have been paid by the applicant at that time, and if not so paid, then to remit the amount due immediately upon the receipt thereof, and in any case where said agent has failed to collect the premium or remit the amount due said company on any policy within sixty days from the date of the issue of such policy, the said agent agrees to forthwith remit the amount due said company or to return such policy to said company for cancellation. The said agent agrees not to deliver any policy until the premium upon same has been paid by the applicant and agrees, in any case where an application has been rejected by said company, to immediately return to the applicant the settlement received thereon and furnish to said company satisfactory evidence that such return has been made.

11. In determining the amount due said agent hereunder the commission shall be computed upon the cash portion of the premium only. No commission shall be due or payable upon any portion of the premium for which a loan agreement or loan certificate is taken or accepted by said company as payment or part payment for any first year or renewal premium.

12. This contract is made with the express understanding that said company reserves to itself the exclusive right, and upon such terms and conditions as it may deem proper, to accept or reject any or all applications for insurance coming under the terms and provisions hereof, and no right to any commission shall accrue hereunder in the event of the rejection of any application, and no commission shall be due or payable on any application until the first annual premium shall have been paid to said company in cash.

13. If in any case the said company shall decide, in consequence of reported misrepresentations by said agent or the solicitor of any application



made prior to the issuance of a policy, to return the premium thereon and cancel said policy; then said agent shall be bound to refund to said company, on demand, the amount of commissions received on premiums so returned.

14. Said agent shall have no authority to accept in behalf of said company anything except cash for premiums upon policies issued; and if said agent does at any time accept note or other obligation instead of cash for any premium, such note or other obligation, shall be taken solely at the risk of said agent, and in all such cases the said agent shall fully account, in accordance with the terms hereof, to said company for the full amount of such premium on account of which said note, or other obligation was taken. In any case where a note, or any obligation, or any renewals thereof, are received by said company from any policy holder for any renewal premium or for an extension of time for the payment of any premium, no commission shall accrue to said agent until such note, or other obligation is paid in cash to said company, and should the said agent become indebted to said company, or should there be any debt or obligation due said company by any subordinate agent, broker, solicitor or other employé of said agent, including any amounts paid or payable by said company to such subordinate agent, broker, solicitor or other employé on policies secured hereunder, or should there be unsettled-for policies outstanding against said agent which have been issued for more than sixty days, the said company may retain any commission to the credit of said agent until such indebtedness is paid and all unsettled-for policies are returned to said company.

15. This contract may be terminated at any time by either of the parties hereto upon any material violation of its terms by the other party hereto.

16. No act of forbearance or neglect to insist upon the prompt performance of any of the duties of said agent, expressed or implied, shall be construed as a waiver on the part of said company of its rights and privileges from the neglect or failure of said agent to perform any of said duties, and nothing shall be construed as a deviation from the terms of this contract or as a waiver of any of the rights or privileges of said company, except there be a written memorandum in each instance, expressing such waiver and subscribed to by the president or secretary of the company.

17. No assignment of this contract or the benefits to accrue hereunder in whole or in part shall be valid or in any way binding on the said company without the written consent of said company.

18. Said agent shall, upon demand, either upon the execution hereof or at any time hereafter, furnish said company with a bond for such an amount and containing such conditions as said company shall deem necessary and with sureties satisfactory to said company.

19. This contract shall be and remain in force until terminated by mutual agreement or as otherwise herein provided.

20. If any notice, writ, summons, process, complaint, petition, declaration or other pleading or paper shall at any time be served upon or received by said agent or any of his subordinate agents or other employés in or concerning any claim, suit, action or special proceedings against the said company, the said agent shall, within twenty-four hours next after the service or receipt thereof, transmit the same by registered mail to said company at its home office, and in case of any neglect, default or failure to transmit as

aforesaid, the said agent shall pay, upon demand, to said company, any and all loss or damage, costs, counsel fees and expenses which may be occasioned by such neglect, default or failure.

21. The terms and conditions as herein set forth can be altered only by mutual agreement evidenced by a written instrument signed by both of the parties hereto, and any arrangement differing from this contract purporting to change its terms, unless approved by both parties in writing bearing the signature of the president or secretary of the company and the signature of said second party, shall be null and void.

22. The said agent agrees to pay to said company the actual cost of medical examination for each policy issued by said company in form as applied for and subsequently returned by said agent for cancelation; and the said agent agrees that all applications for insurance secured in said territory shall be delivered to said company whether the same have been reported on favorably or unfavorably by the medical examiner.

23. This contract shall be considered strictly confidential and under no circumstances shall said agent mention or exhibit the terms hereof to any person or persons under penalty of forfeiture of the same and of all benefits hereunder.

24. This contract is in lieu of all other agreements and undertakings either verbal or written heretofore or now existing between said agent and said company. This contract is made subject to the laws of the state of — now in force or which may be hereafter enacted.

In witness whereof, said company has caused this instrument to be signed by its president and attested by its secretary, and has caused its seal to be hereunto affixed and said second party has hereunto set his hand and seal, this — day of —, 19—. Executed in duplicate, each party retaining a copy.

(Seal) \_\_\_\_\_ Insurance Co.  
By \_\_\_\_\_, President.

Attest: \_\_\_\_\_, Secretary.  
\_\_\_\_\_ (Seal)

Party of the Second Part.

1. See ante, vol. 5, § 4155.

2. As to agreement for exclusive agency see ante, vol. 2, § 804.

### 5170. Agency contract for sale of mimeograph.

This agreement, made this — day of —, 19—, between — Company, of —, party of the first part, and —, party of the second part, of —, witnesseth:

The party of the first part hereby appoints the party of the second part its exclusive selling agent at — for the sale of — and supplies therefor, as enumerated in the list printed on

the reverse side hereof, which said list and the prices therein specified are hereby made a part of this agreement. The party of the first part further covenants and agrees to use such reasonable effort and endeavor as may be within its power to prevent sales, by other than the parties hereto, of said mimeographs and supplies within the territory above specified.

The party of the first part hereby agrees to sell and deliver F. O. B. — to the party of the second part, such of said mimeographs and supplies therefor as may be ordered, for the prices printed on said list, less discounts at the following rates, to wit: — per cent. discount on said mimeographs, and — per cent. discount on supplies for said mimeographs except as herein provided; the party of the second part to pay therefor in — exchange on the — day of the month after date of invoice, or with a cash discount of — per cent., if paid within — days of the date of the invoice.

The party of the second part hereby agrees that when said articles are sold to users, the price for each of said articles shall not be less than the price printed on said list opposite the name of each of said articles, respectively, except when quantities of — and — are sold, discounts may be allowed by the party of the second part, at its option and on its own account, as follows, to wit: — per cent. discount on lots of — of one kind and size of — delivered at one time; — per cent. discount on lots of — of one kind and size of — delivered at one time; and — per cent. discount on — delivered at one time.

The party of the second part covenants and agrees not to sell any oscillating mimeographs or mimeograph supplies outside of the territory covered hereby; nor to sell any supplies for use with mimeographs except those made by and procured from the party of the first part; nor to sell or otherwise dispose of any of said mimeograph supplies to any dealer or agent, but only to users of mimeographs; nor to sell or otherwise dispose of any mimeographs or mimeograph supplies, either directly or indirectly, to any person or concern whom the party of the first part may designate at any time as not being entitled to purchase the same.

Said party of the second part further agrees not to sell stencil duplicating supplies for use on any stencil duplicator excepting supplies made by the party of the first part or its licensees, the — Company, without first obtaining the written consent of said party of the first part. If — Company's supplies are sold by the party of the second part the published list prices of said company are to be observed.

It is further mutually covenanted and agreed that all mimeographs marketed by the party of the first part through its canvassing agent or agents in the territory to which this agreement is limited shall be sold in the name of the party of the second part, and on all sales made by either party hereto while the agent of the party of the first part is in said territory, a discount of — per cent. only is to be given said second party in lieu of the discount stated herein. It is further provided that should old machines be taken in part payment by agents of the first party and on its account, the discount last referred to above shall apply to the net amount of cash the purchaser contracts to pay. It is also agreed that the party of the first part has the option of sending its canvassing agent or agents into said territory whenever in its opinion it is considered advisable to do so, and when this is done the party of the second part agrees to freely assist said agents to make sales on the basis of discount contained in this article.

The party of the second part covenants and agrees to carry a sufficient stock of said mimeographs and supplies therefor to meet possible demand, to pay for such mimeographs and supplies as hereinabove specified, and to report in detail monthly to the party of the first part as the names and addresses of persons or concerns to whom such mimeographs or supplies have been sold, and the character of the goods sold, including the consecutive numbers by which the mimeographs are recorded, and the designating numbers by which the various kinds of supplies are characterized in the annexed list. The said party further agrees to give operating instructions to all purchasers of said mimeographs and to give its attention to all calls for repairs from all users of said mimeographs.

It is further mutually covenanted and agreed that this contract

shall continue in force until ———, 19—, unless sooner terminated in the manner provided for in this or succeeding sections of this contract. Should the party of the first part, however, before said date, change the price of its apparatus or supplies, or its plan of marketing the same through exclusive selling agents, then it may terminate this contract by written notice deposited in the post-office and addressed to the party of the second part at its usual or last known place of address, whereupon this contract shall cease and determine. It is expressly agreed, however, that on exercising this option to terminate, the party of the first part will give to the party of the second part an opportunity to enter into a new contract covering the remainder of the period until ———, 19— (or such longer term as the former may elect), and providing for the marketing of said mimeographs and supplies under such new and different plan or terms as said party of the first part may have adopted.

It is further mutually agreed by and between the said parties, that should the said party of the second part violate any of the provisions hereof or fail to pay for all goods shipped, when due, as herein provided, then the said party of the first part, if it so desires, shall have the privilege of terminating this contract by notice in writing deposited in the post-office and addressed to the said party of the second part at its usual or last known place of business, and this agreement shall thereupon become null and void.

Upon the termination of this contract by notice as hereinbefore provided, or by the expiration of the term to which it is limited, the said party of the first part shall have the privilege, if it so desires, of purchasing all of said articles which the said party of the second part may then have on hand, at a price which shall be equal to the price paid for said articles to it, the said party of the first part.

Signed and delivered in duplicate the day and year first above

written, subject to approval of said party of the first part at its office in —.

\_\_\_\_\_,  
By \_\_\_\_\_,  
Secretary.

(Sign here.) \_\_\_\_\_,  
By \_\_\_\_\_.

Approved —, 19—.

For — Company.

By \_\_\_\_\_,  
Secretary.

**ANTENUPTIAL AND POSTNUPTIAL CONTRACTS.****5175. Marriage settlement of personal property of intended wife.**

Indenture made this — day of —, between — (intended husband), of the first part; — (intended wife), of the second part; and — and —, trustees, of the third part.

Whereas a marriage is intended soon to be solemnized between said first and second parties, and whereas the said second party is possessed of certain property described in the schedule hereto annexed, which, with a view to this present settlement, has been assigned and transferred to the names of the said trustees: Now this indenture witnesseth, that, in consideration of the said intended marriage, it is hereby declared that said trustees, and the survivors and survivor of them, and the trustees or trustee for the time being, who are hereinafter included under the name of trustees, shall stand possessed of the property mentioned or referred to in the schedule hereto, upon the following trusts, namely:

In trust for the said second party until the solemnization of the said intended marriage, and thereafter, upon trust either to permit the said property to remain invested as it now is, or, with the written consent of the first and second parties, or their survivor, and, after the death of such survivor, at the discretion of the trustee or trustees for the time being, to convert the same into money and invest the proceeds in their or his names or name in United States bonds, or in any state, municipal corporation or railroad company bonds, such state, corporation or company being in good credit, or in good mortgages of improved property; with power, with such consent or at such discretion as aforesaid, from time to time to vary the said investments, or other investments of a like nature.

Upon the further trust to pay the annual income of the original and varied investments to the said second party during her life for her separate use, without power of anticipation; and after her death to said first party for his life.

After the death of the survivor of the said first and second parties, then in trust for such issue of the said intended marriage, upon such conditions, and with such restrictions and in such manner as the said first and second parties shall by deed jointly appoint; and in default of such appointment, and subject to any partial appointment, then as the survivor of them shall in like manner, or by will, after the decease of him or her first dying, appoint; and in default of such appointment, and subject to any partial appointment, in trust for all the children or any child of the said intended marriage, who shall attain the age of twenty-one years, or being daughters or a daughter, shall marry under that age; and if more than one, in equal shares as tenants in common: provided that the trustees or trustee for the time being may, after the death of the said first and second parties, or in their, his or her lifetime, with the written consent of them or the survivor of them, raise any part or parts not exceeding altogether one-half of the then expectant or presumptive share of any son of the intended marriage, and apply the same for the advancement or benefit of such son as the trustees or trustee for the time being shall think fit.

If there shall be no child of the said intended marriage who shall attain the age of twenty-one years, or being a daughter shall marry under that age, then the said trust premises and the annual income thereof shall be held upon such trusts and in such manner as said second party shall during coverture by her will, or after the death of her said husband, by deed or will, appoint.

In default of such appointment, and subject to any partial appointment, in trust for the said second party, if she shall survive her said husband; but if he shall survive her, then in trust for such person or persons as, under the statutes of the state of — for the distribution of effects of intestates, would become entitled thereto at her decease had she died possessed thereof intestate and unmarried, such persons, if more than one, to take as tenants in common in the shares in which they would have taken under the same statutes.

In witness, etc.

1. No operative words of transfer are necessary if the property consists of bonds or other securities payable to bearer, or of stocks or shares transferable



by indorsement in the usual method. If it consists of mortgages, these should be transferred to the trustees by assignments in the usual form. And generally, where it consists wholly of personalty, this is transferred to the trustees in the appropriate form at the time of the execution of the deed of settlement, and no formal transfer is made in the deed itself.

2. See ante, vol. 1, § 293.

#### 5176. Release by intended wife of all interest in husband's estate.

Whereas a marriage is contemplated by and between said parties and their mutual rights, obligations and desires having been fully considered, they hereby mutually covenant and agree each with the other, to which they respectively bind themselves, their executors, administrators and heirs as follows:

The said —— (intended husband) in consideration of the promise of said —— (intended wife) to marry him and of the consummation of said promised marriage and of her agreements herein contained, covenants and agrees that he will upon his decease pay, cause to be paid, or provide that there shall be paid to her, if she is then living, \$50,000 in good and lawful money of the United States within one year after his death; and she, the said ——, in consideration that said contemplated marriage be consummated and of the covenant of said —— hereinbefore contained covenants and agrees to and with said ——, his executors, administrators and heirs that she will, upon the death of said ——, take and receive said \$50,000, in full of all rights of dower in or to his estate and in full of all other rights, interests, claims or allowance in law or in equity into or upon his estate, real and personal, which she might or could have or be entitled to but for this agreement:

That on payment to her of said \$50,000 by the executor of the will or the administrator of the estate or by the heirs of said —— within one year from the date of his death, she will release, quitclaim and discharge to his representatives or heirs all rights of dower and every and all other rights, claims, interests in law and equity which she might or could have in or to his estate or property, or any part thereof but for this agreement.

To which covenants and agreements said parties mutually bind themselves, their executors, administrators and assigns.

Signed, sealed and acknowledged by both before ——, justice of the peace.

**5177. Contract for support in lieu of marriage.**

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That whereas first party has heretofore promised and agreed and obligated himself to marry said second party;

Now, therefore, in consideration that said second party does hereby release first party of his said contract, agreement and obligation to marry second party, he, the said first party, does hereby agree to suitably maintain and support said second party for and during her natural lifetime or until such time as she may marry some other person, in which event the obligation to furnish such support and maintenance shall cease and first party is to be relieved from the obligations of this agreement.

In witness whereof, the first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_

**5178. Antenuptial agreement that property of each is to be separate and independent.**

Indenture made the — day of —, 19—, between (bridegroom) of —, of the one part, and (bride) of —, of the other part. Whereas a marriage is intended to be solemnized between said parties, and in view of the fact that after their marriage, in the absence of any agreement to the contrary, their legal relations and powers as regards property may, by reason of some change in their domicil, or otherwise, be other than those of their present domicil, or other than those which they desire to have apply to their relations, powers and capacities:

Now this indenture witnesseth, that each of them, the said — and —, hereby declares it to be his and her desire that during their marriage each of them shall be and continue completely independent of the other as regards the enjoyment and disposal of all property, whether owned by either of them at the commencement of the marriage or coming to them or either of them during the marriage. And each of them hereby agrees with the other, in view and consideration of said proposed marriage, that so far

as is legally possible by their private act and agreement, all property belonging to either of them at the commencement of the marriage, or coming to either of them during the marriage, shall be and be enjoyed by him or her, and be subject to his or her disposition as his or her separate property in the same manner as if the said proposed marriage had never been celebrated.

In witness whereof, the said parties have hereunto set their hands and seals at — this — day of 19—.

(Signature and seals of both parties.)

**5179. Agreement that neither shall acquire any interest in estate of other.**

This indenture made this — day of —, 19—, by and between — of — (intended husband), of the first part, and —, (intended wife), widow of —, of —, of the second part, witnesseth: Whereas a marriage is shortly to be had and solemnized by and between said parties, and upon the treaty therefor each of said parties has consented and agreed with the other that neither shall have possession or acquire any estate or interest in any property, real or personal, or right of action, of which the other is or shall be at the time of said marriage seized or possessed; and that said — (intended husband) shall have no right, interest or claim in the estate of — (intended wife), real or personal, after her decease, as tenant by curtesy or by virtue of any statute of descent or distribution; and that — (intended wife) shall have no right to dower or homestead in any real estate of which — (intended husband) is or shall be seized or possessed, and no claim to his personal estate by virtue of any statute. Now know ye, that in consideration of premises and of covenants and agreements acknowledged and recorded of said — (intended husband), hereinafter contained on his part and of \$1 to her, said — (intended wife), paid by said — (intended husband), she, said — (intended wife), doth hereby assent to and accept and covenant and agree to and with said — (intended husband), his heirs, executors, administrators and assigns to accept the covenants and agreements aforesaid to and for her own benefit in lieu, bargain and satisfaction of and for all homestead, dower and thirds at the common

law, or by force of any statute, custom or otherwise which she, said — (intended wife), could or might under any circumstances whatever otherwise have claimed or have been entitled to or out of all or any of the messuages, lands, tenements and hereditaments whatsoever of which he, said — (intended husband), now is or may during said coverture be seized for any estate or inheritance, or for other dowable estate or interest whatsoever. And she, the said — (intended wife), doth acquit, release and discharge said lands and premises and all and singular the personal estate which the said — (intended husband) shall be possessed of or entitled to at his decease, of and from all claim of dower, homestead or as an heir-at-law, or under and by force of any statute, custom or otherwise, so that the same and any part thereof shall, in case she, said — (intended wife), shall survive said — (intended husband), go and be disposed of in like manner in every respect as if he, said — (intended husband), had continued sole and unmarried. And said — (intended husband), in consideration of premises and of covenants and agreements of said — (intended wife), herein contained, and of her release aforesaid and of \$1 to him paid by said — (intended wife), recorded, acknowledged, he, said — (intended husband), doth promise, declare and agree to and with said — (intended wife), and her heirs, executors, administrators, that she, said — (intended wife), from and after said intended marriage hath been solemnized, shall hold, possess and enjoy during coverture to her sole and separate use, free from interference and control of him, said — (intended husband), all and single the real and personal estate and choses in action of which she is or may be seized or possessed at the time of marriage or at any time afterward. And that she, said — (intended wife), shall have the entire and free disposition of all and singular her estate, real and personal, and choses in action, by her last will and testament in like manner as if she were sole and unmarried. And that in case said — (intended wife), should die during his lifetime, said — (intended husband), shall not nor will have any claim or demand on estate, right, title, or interest in or to all or any of the real and personal estate whatsoever of said — (intended wife) as tenant by the curtesy or

as administrator or by virtue of any statute. And he, said — (intended husband), doth acquit, release and discharge all and singular said real and personal estate and choses in action which said — (intended wife) shall be possessed of or entitled to at her decease, and from all claim as tenant by the curtesy or by virtue of any statute; and the same is hereby declared to be forever discharged of and from all and any such claim and demand.

In witness whereof, etc.

(Signatures and seals of parties.)

### 5180. Marriage settlement of property of intended husband.

Indenture made this — day of —, 19—, between — (intended husband), of the first part; — (intended wife), of the second part; and — and —, trustees, of the third part.

Whereas a marriage is expected to be shortly had and solemnized between the first and second parties, and upon the treaty of such marriage the said —, first party, in consideration of — dollars to him by the said trustees paid, did covenant and agree to and with the said trustees that he would transfer, set over, and well and sufficiently convey unto the said trustees, all and singular the bonds, stock and policies of life assurance, more particularly set forth and mentioned in the schedule hereto annexed, and the real estate, also more fully and particularly set forth and mentioned in the schedule aforesaid; and that he would execute a bond to the said trustees in the penal sum of — dollars, conditioned for the payment of — dollars on or before the — day of —, 19—, and to secure the same would convey by way of mortgage to the said trustees all that certain land situate, lying and being in the city of — and state aforesaid, bounded and described as follows, etc.:

Now, therefore, in consideration of the said intended marriage and of the said sum of — dollars to him paid as aforesaid, the said first party doth hereby assign, transfer, set over and convey unto the said trustees all and singular the bonds, stocks, policies of assurance on his life and other choses in action aforesaid; and also doth hereby give, grant, release and forever quitclaim unto the said trustees all and singular the land aforesaid; and also, by way of mortgage, all and singular that certain land more particu-

larly set forth and described in the recital hereof; together with all and singular the rights, privileges and appurtenances thereto, according to its respective kind and nature, appertaining or in any way belonging:

To have and to hold all and singular the said property, which shall be hereinafter designated as the "settled property," to the said trustees, and the survivor of them, and their and his successor or successors in said trust, and, according to the nature and kind of the same, to their and his heirs, executors, administrators and assigns forever. In trust, nevertheless, to and for the following uses, trusts, intents and purposes, and to none other whatsoever, that is to say, till such intended marriage is duly had and solemnized, to the use of said first party, and to his heirs, executors, administrators and assigns; and from and immediately after such intended marriage, in trust to and for the sole, separate and exclusive use of the said wife, free from the liabilities or control of the said husband; and for and during the term of their joint lives respectively, her receipt for the income, dividends, interest or other yearly proceeds, when actually due, shall be a sufficient discharge therefor to the said trustee; and from and after the death of the said wife, the said husband surviving her, then in trust for the use of the said husband, either till he shall die, or till he begin, or any one or more of his creditors shall begin proceedings for the purpose of having him adjudged a bankrupt, or insolvent debtor, and he be adjudged or declared such bankrupt or insolvent debtor; or till he shall take the benefits of the present or any future law for the relief of insolvent debtors, or enter into a compromise with his creditors for the payment of any debts which he may now or at any time hereafter owe, or mortgage, sell, assign, charge or in any manner whatsoever, by way of anticipation or otherwise, dispose of the said settled property, or any part thereof, or the interest, income, dividends, profits or other yearly proceeds arising therefrom, or any part thereof; or till any other act or event shall happen, either by or through his own act or default, or the act or default of any person or persons whomsoever, or by operation of law, whereby the said settled property or any part thereof, or the interest, income, profits or other yearly proceeds arising therefrom, if con-

tinuing to the use and behoof of him, the said husband, and payable to him, would vest, or become liable to vest, in any other person; or till any creditor or creditors of the said husband shall, by any process in law or equity or otherwise, attempt to subject the settled property, or any part thereof, to the payment of the debts of the said husband, or any one or all of such debts. And from and immediately after the death of the said husband, or the sooner determination of his interest in the said settled property or any part thereof, as hereinbefore provided, he having survived his said wife, then in trust to keep the said settled property invested, and the annual proceeds and income arising therefrom to collect and apply to the support, maintenance and education of the child or children of the said husband and wife living at the time of the determination of his interest in the settled property, or which may come into existence thereafter, till the youngest child shall become of age of twenty-one years, in such share and proportions as the said husband from time to time, and at all times during his life interest, or by his last will and testament, shall appoint. But if the said wife shall have died before the death of the said husband, and there shall be no such child, then in trust to hold the said settled property for the use, benefit and behoof of, or to convey the same to, such person or persons and for such use and uses, and upon such trusts, limitations, conditions and provisions, as the said husband, by any written deed or instrument executed by him under seal in the presence of two or more witnesses, or by his last will and testament, shall direct, limit and appoint.

But in case the said wife shall survive her said husband, then in trust, to convey and vest the settled property in the executor or executors of the last will and testament of the said husband, for the use of such person or persons as he may thereby appoint, subject to the limitations and provisions therein contained: provided always, nevertheless, that the said settled property shall in no way be subject or liable for the debts which he, the said husband, may owe at the time of his death; and failing such last will and testament, or such appointments therein, in case he leave issue surviving him, then to keep said settled property invested, and to pay to said wife the income arising therefrom, to be by her ap-

plied to her own use and that of such issue, in such way and proportions as she shall deem proper, for and during the joint lives of said wife and the longest-lived of such issue; and if said wife survives all such issue, then to pay to her the whole income, and to convey to her the principal, upon the conditions and provisions hereinafter provided in case said husband shall leave no such issue. And from and immediately after the wife's death, issue of the said husband surviving her, then to keep said settled property invested till the youngest child of the said husband shall be or become of the age of twenty-one years, and then to divide the income equally among them; and upon the happening of such last said event, then to convey or divide the principal of the said property to and among the issue of the said husband living at the time of such division, the issue of any deceased child taking by representation. But in case the said husband shall leave his said wife surviving him, and leave no issue living at the time of his death, or in case he leave such issue and the longest-lived of such issue predecease his said wife, then from and immediately after the death of the said husband, or from and immediately after the death in the lifetime of the said wife of the longest-lived of such issue, in trust to convey by proper deed one moiety of the said settled property unto the said wife, for her own use absolutely, and the income of the other moiety to pay to her during her life, and after her death to convey this last moiety unto and among the next of kin of the said husband who may be living at the death of the said wife. (Add clauses for appointment of new trustees; giving the trustees for the time being all the powers conferred upon the trustees named; power to trustees to change investments; and covenant by husband to keep up policy of insurance.)

In witness, etc.

#### **5181. Separation agreement of husband and wife.**

Memoranda of articles of separation, and agreement of property settlement made and concluded this —— day of ——, 19——, by and between —— and —— (husband and wife), of the county of —— and state of ——, witnesseth as follows, to wit:

It is hereby agreed by and between said parties that from the



signing of this agreement said parties will live separate and apart from each other and each for themselves promises and agrees not to interfere or meddle with the personal actions of the other and each is hereby empowered to follow their course of life the same as if no marriage relation existed between them, and no control shall be used by either over the actions of the other.

It is hereby agreed by said parties that the said —, husband, hereby releases all rights, interests, claim, demand and privileges in or to any or all the real estate or personal property now owned by said —, wife (as her own personal estate), as well as any and all personal property which the said —, wife, may in the future acquire.

The said wife hereby covenants and agrees that she —, by these presents hereby releases all rights, interests, claims, demands, privileges and dower in and to any and all the real estate and personal property now owned by said —, husband, as well as to any and all property which the said husband may in the future acquire.

It is further agreed that said wife shall alone be entitled to the possession of the farm owned by her in said county, and the said husband to be alone entitled to the possession of the farm owned by him, and it is agreed that this shall be a full, complete and entire settlement of the property real and personal owned by said parties, and to be acquired by either of them in the future.

The said husband hereby covenants and agrees that the said wife shall have the right and privilege to remove from the farm of the said husband all the personal property, furniture, paraphernalia and goods owned by the said wife, brought by the wife to said husband at the time of their marriage, and also the right to remove all personal property acquired by said wife since said marriage.

It is hereby agreed by and between said parties that said wife shall be entitled to the possession of —, aged two years, born to said parties during said marriage, and it is hereby agreed that said husband at all reasonable times shall have the right to visit and see his said child, and make such provision for said child as to him the said husband may deem just, and that when

said child shall arrive at the age of ten years she shall have the right to choose between said parents. After said choice either of said parties shall have the right to see said child as above.

1. *Gaster v. Gaster's Estate*, 90 Nebr. 529, 134 N. W. 235.

### APPRENTICESHIP CONTRACTS.

#### 5185. General form.

This agreement, made and entered into this —— day of ——, 19——, by and between ——, a minor, party of the first part, and ——, his father, party of the second part, and ——, party of the third part, witnesseth:

That first party, by and with the consent of second party, does hereby, of his own free will and accord, bind himself to serve said third party, as apprentice in the trade or capacity of a (here state trade, profession or employment), for the term of —— years from date hereof, and the said first party agrees that during all of said term he will faithfully, honestly and industriously serve said third party, keep his secrets, obey his lawful commands, and at all times protect and preserve the goods and property of third party, and not suffer or allow any to be injured or wasted, and that he will not do or commit any act or thing by which the goods or property of third party shall be injured or destroyed, but will in all things behave himself as a good and faithful apprentice should toward his master, and that he will not leave the service of said third party during the life of this contract; and said third party, upon his part, agrees that he will provide suitable and proper board, lodging and medical attendance for first party during the continuance of said term of apprenticeship. And the said third party further agrees that he will teach, or cause to be carefully and skilfully taught, to said first party every branch of said business to which first party is apprenticed by this indenture, and that at the expiration of such term of apprenticeship he will give to such apprentice a certificate in writing that first party has served at such (trade, business or profession) a full term of apprenticeship, as specified in this contract. And for the true performance of all and singular the covenants and agreements herein contained, the said parties hereto severally bind themselves.

In witness whereof, the several parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

I, —, do hereby certify that — has served a full term of apprenticeship at the trade or craft of (here state trade, business or profession) in compliance with indenture of apprenticeship dated — —, 19—.

In witness whereof, I have hereunto set my hand and seal this — day of —, 19—.

\_\_\_\_\_.

## ARBITRATION.

### 5190. Agreement for submission.

Agreement made this — day of —, 19—, between — of —, of the one part, and — of —, of the other part.

Whereas disputes and differences have arisen and are still subsisting between the said parties, relative to (state the specific matters in dispute) :

Now it is hereby agreed that the said disputes and differences shall be, and are hereby, referred to the arbitration and determination of — of —, and of — of —, arbitrators nominated by the said parties respectively; or, in case they shall not agree in making an award, then, as regards the matter or matters as to which they shall disagree, to the umpirage of such disinterested person as the said arbitrators shall in writing under their hands, before they enter on the business of the reference, appoint: provided that said arbitrators make and publish their award in writing signed by them, and deliver the same to said parties or either of them, on or before the — day of — next, or on or before such subsequent day, to which the said parties shall by writing under their hands extend the time for making the said award.

And it is further agreed that the costs of the reference and award shall be in the discretion of said arbitrators, or umpire, who may direct to and by whom and in what manner the same shall be paid.

In witness, etc.

1. In several states there are statutes providing for and regulating arbitration proceedings. Generally no forms are provided by statute. See, for substantive law, ante, vol. 4, chaps. 66 and 67. In several states it is expressly provided that agreements for arbitration shall not be enforceable.

2. See also, as to effect and necessity of agreement, ante, vol. 4, § 2941.

### 5191. Agreement for submission—Another form.

This agreement, made this — day of —, 19—, between — of —, and — of —, witnesseth that there is now existing and pending between the said parties a controversy in

relation to —— (state fully the matter in controversy): Now, therefore, the said parties do hereby submit the said controversy to the arbitration of ——, ——, and ——, or any two of them; and we do mutually covenant and agree with each other that the award to be made by the said arbitrators, or any two of them, shall in all respects be well and faithfully kept, and observed by each of us: provided, however, that the said award shall be made in writing, under the hands of the said arbitrators, or any two of them, and shall be delivered to said parties, or such of them as shall desire to receive the same, on or before the —— day of —— next. Said arbitrators, or any two of them, may, at their discretion, award the payment of the expenses and costs of this reference to either or both of said parties.

In witness, etc.

#### 5192. Submission by agreement—Another form.

Agreement made this —— day of ——, 19——, between ——, of ——, and ——, of ——.

Whereas certain disputes and causes of difference have arisen, and still exist, between the parties hereto, and it is agreed by and between the said parties to refer the said disputes and causes of difference to the award and determination of ——, of ——, whose award in writing duly signed by him, of and concerning the same, shall be delivered to us, or either of us, on or before the —— day of —— next, or on such further day as the said arbitrator shall by writing, signed by him, indorsed on this agreement, from to time enlarge the time for making his award. And it is further agreed that the said arbitrator may, by his award, order and determine what he shall think fit to be done by either of us respecting the said matters in difference; and also that the costs of the said reference and award shall be in the discretion of the said arbitrator, who may direct to whom and by whom, and in what manner, the same shall be paid. The parties hereto agree each with the other to stand to, abide by, perform, fulfil, and keep the said award, so to be made and published as aforesaid.

The said arbitrator shall be at liberty to examine the parties, either or both of them, and the witnesses in the reference and

the parties, if examined, shall be examined on oath or affirmation. The parties respectively shall produce before the arbitrator all books, documents, papers, maps, plans, and writings in their custody, power or control, relating to the matters referred, which the said arbitrator may require. The arbitrator shall be at liberty to proceed ex parte, if either of the said parties shall refuse or neglect to attend the reference without reasonable excuse for such refusal or negligence. The parties hereto agree each with the other that he will not bring or prosecute any action in any court against the other, or against the arbitrator, concerning the matters in difference, or any of them.

In witness, etc.

**5193. Submission of dispute as to wages of seamen.**

UNITED STATES SHIPPING COMMISSIONER'S OFFICE,

—, —, 19—.

The undersigned, master and mariners of the ship —, lately arrived from —, do hereby (each one for himself) mutually agree to refer the matter of dispute, with respect to the wages due the said mariners arising out of the voyage just completed, to the decision of the shipping commissioner.

**5194. Submission to appraisers of question of damages under a fire insurance policy.**

It is hereby agreed by —, of —, of the first part, and the — Insurance Company, of the second part, that — of —, and — of — (together with a disinterested third person to be appointed by them in case of disagreement, who shall act as umpire on items of differences only), shall appraise and estimate, at the true cash value, the damage by fire to the property specified and described in the policy of said company, and insured in the name of said —, which appraisalment and estimate by them, or any two of them, as above provided, in writing, as to the amount of such loss or damage, shall be binding on both parties so far as regards such appraisalment; it being understood that this appointment is without reference to any other question or matters of difference within the terms and conditions of the

insurance, and is of binding effect only so far as regards the actual cash value and damage at the time of fire to such property, which was insured and covered by policy of said company, dated the — day of —, 19—, and numbered —.

The property on which damage is to be estimated and appraised is merchandise, fixtures, furniture, and other personal property, belonging to said party of the first part, and situate in the store numbered —, on — street, in said —.

The said appraisers are to take into consideration the condition and value of said merchandise previous to the fire, and also the value of the merchandise, or any portion which may be saved; and, after making an estimate of the cost of replacing said property, a proper deduction shall be made by them for the difference, if any, between the value of new or replaced merchandise and that insured. Said appraisers are hereby directed to prepare their award of said loss or damage in the form of an itemized statement in detail, in accordance with above agreement, and make return of same to the said company.

This appraisal and agreement does not waive, and is without prejudice to, any of the terms and conditions of the policy of said company.

Witness our hands at —, the — day of —, 19—.

1. The property should be described as it is described in the policy. If the property consists of buildings, the same form of submission may be used, substituting the appropriate changes as to the description of the property.

2. See also, ante, vol. 5, § 4314.

#### 5195. Submission of matters in dispute in a pending action.

Agreement made this — day of —, 19—, between — of —, first party, and — of —, second party: Whereas an action is now pending in the — court for the county of —, and state of —, wherein the said first party is plaintiff, and the said second party is defendant, it is now agreed that said action shall be continued, and all proceedings stayed except such as may be necessary to carry out this agreement, and that all claims, demands and accounts in dispute in the said action shall be referred, and are hereby referred, to the arbitration of — of —, and — of —, arbitrators, nominated by the said parties respectively, or, in case they shall not agree in making

an award, then to the umpirage of such disinterested person as the said arbitrators shall, before they enter on the said business of reference, appoint; and that they or he shall award the costs of, and incidental to, this reference to be borne and paid as they or he shall deem just.

In witness, etc.

1. See Burns' Rev. Stat. (Ind.) 1908, §§ 875-900; Ky. Stats. (1909) § 70; Codes (1902) § 451, sub. 2.

2. As to arbitration in building contracts, see ante, vol. 4, ch. 99.

#### **5196. Reference of all matters in dispute to one arbitrator.**

We, — of —, and — of —, do hereby refer all matters in dispute between us to the award and determination of — of —, whose decision and award shall be final and binding on us and our respective heirs, legal representatives and assigns, and who shall have power to direct to and by whom and in what manner the costs of the reference and award, or any part thereof, shall be borne or paid.

In witness, etc., this — day of —, 19—.

1. See ante, vol. 4, ch. 66.

#### **5197. Reference of all matters in dispute to one arbitrator—Brief form.**

We agree to refer all matters in difference between us to — for his determination and award, which we agree to keep, abide by, and perform.

### **ARBITRATION CLAUSES.**

#### **5198. Agreement to submit future differences to arbitration.**

If at any time hereafter any dispute, difference, or question shall arise between the said parties hereto, or their respective heirs, legal representatives, or assigns, or any of them, touching the construction, meaning or effect of these presents, or any clause or thing herein contained, or the rights or liabilities of the said parties respectively, or their respective heirs, legal representatives or assigns, or any of them, under these presents, or otherwise howsoever in relation to the premises, then every such dispute, difference, or question shall be referred\* to the arbitra-



tion of two indifferent persons, one to be appointed by each party to the reference, or an umpire to be appointed by the arbitrators in writing, before entering on the business of the reference; and if either party shall refuse or neglect to appoint an arbitrator within —— days after the other party shall have appointed an arbitrator, and shall have served a written notice upon the first mentioned party requiring such party to make such appointment, then the arbitrator appointed as aforesaid shall, at the request of the party appointing him, proceed to hear and determine the matters in difference as if he were an arbitrator appointed by both parties for that purpose; and the award or determination made by the said arbitrators, arbitrator, or umpire shall be final and binding upon the said parties hereto respectively, and their respective heirs, legal representatives and assigns: provided the award shall be made in writing within —— days next after the reference to them or him, or on or before any later day to which the said arbitrators or arbitrator, by any writing signed by them or him, shall enlarge the time for making their or his award and provided such umpire shall make his award or determination in writing within —— days next after the original or extended time appointed for making the award of the said arbitrators shall have expired, or on or before any later day to which the umpire shall, by any writing signed by him, enlarge the time for making his award.

1. See, generally, ante, vol. 4, § 2941 et seq.

2. The commencement, body and testimonium are as in ordinary contracts. The various clauses are to be selected and inserted as required, if the agreement contemplates arbitration.

3. See ante, vol. 4, § 2944.

#### 5199. Recital of partnership matters referred.

Whereas the said parties have carried on the business of —— as a partnership, and the accounts between them have become involved, and differences have arisen among them relating thereto, it is hereby agreed that the copartnership accounts and all matters in difference between the parties, or any of them, or between any one or more of them, and any other one or more of them, shall be referred, etc. (Conclude as in form 5198 above, after \*.)

**5200. Statement of matters intended to be referred.**

The solicitor of each of the said parties shall state in writing all the matters and things intended to be referred by his client to the arbitrator, and shall, at least ten days before the day appointed by the arbitrator for his first sitting on the arbitration, deliver a copy of such statement to the solicitor of each of the other parties respectively; and only those matters and things which shall be comprehended in such respective statements shall be taken into consideration by the arbitrator.

**5201. Provision regarding legal proceedings.**

And it is also hereby agreed and declared that no action or legal proceedings shall be commenced or prosecuted by either of the said parties hereto, or his executors, administrators, or assigns, against the other of them, his executors, administrators, or assigns, touching any of the said matters in difference, unless the party to be made defendant to such action or proceedings shall have refused or neglected to refer such matters to arbitration pursuant to the provisions hereinbefore contained, or unless the time limited for making such award as aforesaid shall have expired without any such award being made.

1. See ante, vol. 4, § 2948.

**5202. Power to arbitrators to proceed ex parte.**

The said arbitrators or umpire shall be at liberty to proceed ex parte in case of the nonattendance of either of the said parties, or of their witnesses, after —— clear days' previous notice in writing, under the hand of the said arbitrators or umpire, given to the said parties respectively, or their respective solicitors or agents, or left or sent by post to their respective offices or places of business, notifying them of the time and place of meeting to proceed with the said reference.

1. See ante, vol. 4, § 2958.

**5203. Parties to be examined.**

And it is also hereby agreed that the respective parties to such references, and all persons claiming through them respectively,

shall submit to be examined by the said arbitrators, arbitrator, or umpire, upon oath or affirmation, in relation to the matters in dispute, and shall produce before the arbitrators, arbitrator, or umpire all books, deeds, papers, accounts, writings, and documents which may be required or called for by said arbitrator, or umpire, and do all other things which, during the proceedings on the said reference, the said arbitrators, arbitrator, or umpire may require; and that the witnesses on the reference shall, if the arbitrators, arbitrator, or umpire shall think fit, be examined on oath or affirmation.

1. See ante, vol. 4, § 2958.

**5204. Each party may inspect books.**

Each of the parties shall in the meantime, upon written demand previously made, be at liberty to inspect, peruse, and have copies of, all or any of the books, papers, and writings in the hands, custody, or power of the other or others of them the parties respectively, relating to the matters in reference.

**5205. Power to employ accountant.**

The said arbitrators or umpire shall have authority to appoint and employ an accountant to assist them or him, at the expense of the said parties, and said parties shall be liable to such accountant for his reasonable remuneration, and as between the said parties the fees of such accountant shall be borne and paid as the said arbitrators or umpires shall direct; and such accountant may be required to make his solemn declaration, of the truth of the account of statement to be made out by him.

1. See ante, vol. 4, § 2952.

**5206. Evidence taken by arbitrators may be acted upon by umpire.**

The said umpire shall be at liberty to act upon all or any part of the evidence taken before the said arbitrators as reported by them to him, and to make his award thereupon (unless either of the parties to the reference shall require any witnesses to be reheard, or any other evidence to be retaken, or shall tender any

fresh evidence, in which case the said umpire shall hear or examine such witness or evidence).

1. See ante, vol. 4, §§ 2959-2961.

#### **5207. Death of party not to affect reference.**

And it is further agreed that the submission hereby made shall not be defeated or affected by the death of the said parties, or of any of them, pending the same, but shall or may be proceeded with, and the matters in difference determined in the same manner as if the award of the said arbitrators had been made or determined in the lifetime of the party or parties so dying; and the legal representatives of the party or parties so dying shall be deemed and considered to be, and shall be, a party or parties to the reference or submission hereby made, any rule of law or equity to the contrary notwithstanding.

1. See ante, vol. 4, § 2947.

#### **5208. Disabilities not to affect reference.**

The power or authority hereby given to the said arbitrators shall not be revoked or determined by either of the said parties, or by the death, bankruptcy, insolvency, legal incapacity, or disability of either of them; but the said arbitrators shall, notwithstanding any or either of such events, proceed in the business of the said reference as if no such event had happened; and the decision of the said arbitrators or umpire in the premises shall, notwithstanding such events, be as binding and conclusive upon the said parties, and the heirs, or legal representatives of the parties so dying, becoming bankrupt or insolvent, or subject to any legal incapacity or disability; but so far only as to affect any assets which may be applicable by law to the satisfaction of any sum which may be awarded by the said arbitrators or umpire to the other or survivor of them, the said parties hereto, or to the representatives of the other of them.

#### **5209. General power to direct what shall be done.**

The said arbitrators or umpire shall have full power in all respects to award and direct what shall be done by the said parties respectively in relation to the matters in difference.

1. See, generally, ante, vol. 4, § 2952.

**5210. Power to direct execution of deeds.**

The said arbitrators or umpire shall have power to award and direct that the said parties hereto, or any one or more of them, or their respective heirs, executors, administrators, or assigns, shall execute such releases, conveyances, assurances, and do such things as the said arbitrators or umpire shall think fit, and such releases, conveyances, assurances, and things shall be executed and done accordingly.

**5211. Power to make submission and award a rule of court.**

And it is hereby agreed and declared that this submission to reference, and any award made in pursuance thereof, may, at the instance of either of the parties to the reference, and without any notice to the other of them, be made a rule or order of the — court of — county of the state of —.

**5212. Power to direct entry of judgment.**

The said arbitrators or umpire shall be at liberty to direct judgment to be entered for the plaintiff or defendant in the said action, or to direct all further proceedings in the said action to be discontinued or stayed, or to direct the said action to be dismissed with or without costs, or to direct such proceedings to be taken in or with respect to the said action as the said arbitrators or umpire shall deem fit.

1. See ante, vol. 4, §§ 2940, 2948.

**5213. Costs to abide event.**

The costs of the said action, and of this reference and the award, shall abide the event of the award.

1. See, generally, ante, vol. 4, § 2978.

**5214. Costs between attorney and client.**

The arbitrator or umpire shall be empowered to award costs to be paid as between attorney and client.

1. See ante, vol. 4, § 2978.

**5215. Notice to arbitrators of appointment.**

Messrs. — and —.

Sirs: You are respectfully notified that the undersigned have

chosen you as arbitrators to arbitrate and make an award concerning certain disputed matters hereby submitted to you, as follows: (here set out specifically) and you are requested to act accordingly and make such award by the —— day of ——, 19—, and to arrange with the undersigned meanwhile as to the time and place of taking testimony in the premises.

Respectfully,

\_\_\_\_\_  
\_\_\_\_\_

1. See ante, vol. 4, § 2957.

## EXTENSION, BOND, REVOCATION.

### 5216. Enlargement of time by parties.

We, the within named parties, hereby allow to the arbitrators appointed by the agreement of reference within contained further time for making their award, namely, until the —— day of ——, 19—; and agree that all the provisions of the said agreement of reference shall continue in full force and effect, and be construed and read in the same manner as if the day hereby allowed for making the award had been given and allowed by the said agreement.

1. See ante, vol. 4, § 2962.

### 5217. Bond of party to arbitration.

Know all men by these presents, etc. The condition of this obligation is such that if the above bounden ——, his heirs, executors and administrators, shall, in all things, well and truly abide by, perform and keep the award, order, arbitrament and final determination of ——, —— and ——, arbitrators appointed to arbitrate, award and determine concerning a certain matter in controversy between the said obligor and the said obligee, fully set forth in the agreement of submission to said arbitrators, made by the parties hereto, dated the —— day of ——, 19—: provided the said award be made in writing, under the hands of the said arbitrators, or any two of them, ready to be delivered to the parties hereto on or before the —— day

of — next, then this obligation to be void, or otherwise to remain in full force.

In witness, etc.

1. See Bonds, 5475 et seq.
2. See ante, vol. 4, § 2942.
3. Bonds are sometimes required by statute. See Burns' (Ind.) Rev. Stat. 1908, § 877.

### 5218. Revocation of submission by a party

Know all men by these presents that I, — of —, do revoke, annul, and make void all the power and authority which by a certain agreement of reference in writing, made the — day of —, 19—, between me and — of —, were conferred upon — and — of —, the arbitrators thereby appointed to award and determine on certain matters in difference between me and the said —; and I do hereby discharge and prohibit the said — and — from making any award, or from any further proceeding in the said arbitration.

Witness my hand this — day of —, 19—.

1. See ante, vol. 4, § 2947.

### 5219. Notice to arbitrator of revocation.

Sir,—I hereby give you notice that, by a writing under my hand, I have revoked and annulled and made void your authority as arbitrator, and I hereby discharge and prohibit you from further proceeding in the matters of the arbitration or reference between myself and —.

To —. Dated —, 19—.

1. See ante, vol. 4, § 2947.

## APPOINTMENT.

### 5220. Appointment of an arbitrator in pursuance of an arbitration clause in articles of partnership.

Whereas by articles of partnership, dated —, 19—, amongst other things it was agreed that, in case any dispute or question should arise between the said parties relative to the construction of the said articles, or to any of the matters therein contained, the same should be referred to the arbitration of two indifferent persons, one to be named by each of the parties, with power for

such arbitrators to appoint an umpire in case of their disagreement; and that the award of the said arbitrators or umpire should be final and conclusive; and whereas disputes have arisen between the said parties relating to their partnership affairs, and they have in pursuance of the said covenant agreed to refer the same accordingly: Now, therefore, I, —, one of the partners, hereby nominate and appoint — of — an arbitrator for me and on my behalf, to hear and determine the disputes aforesaid, in accordance with the provisions of the said articles of partnership.

Dated the — day of —, 19—.

1. See ante, vol. 4, § 2951.

**5221. Appointment of umpire by arbitrators by indorsement on the agreement of reference.**

We, the within named arbitrators, in pursuance of the powers given us by the within written agreement, do hereby nominate and appoint — of — to be umpire according to the said agreement of reference, provided he shall, in writing, accept the office within — days from the date hereof.

In witness, etc.

1. See ante, vol. 4, § 2960.

**5222. Appointment of an umpire by arbitrators.**

Pursuant to the powers given to us by an agreement of reference made on the — day of —, 19—, we, the arbitrators appointed thereby, do by these presents nominated and appoint — of — to be the umpire, according to the provisions of the above mentioned agreement of reference, provided he be willing to accept such office.

As witness our hands this — day of —, 19—.

**5223. Appointment of umpire by arbitrators indorsed on submission.**

We, the within named arbitrators, — and —, do hereby nominate and appoint — of — to be the umpire, pursuant to



the within contained provisions, on condition that he do, within — days from the date hereof, in writing, accept the umpirage.

Witness our hands this — day of —, 19—.

1. See ante, vol. 4, § 2960.

**5224. Notice by arbitrators to umpire of disagreement.**

In the matter of the arbitration between — and —.

To —, Esquire, Umpire.

This is to give you notice that we are unable to agree with regard to the matters referred to us in the above-mentioned arbitration, and that there is no probability of our making any award, and that you are at liberty to proceed as umpire forthwith, to investigate and decide on the matters.

Dated the — day of —, 19—.

**5225. Appointment of a joint arbitrator by two arbitrators—By indorsement.**

We, — and —, the arbitrators within named, pursuant thereto, do hereby nominate and appoint — of — the third arbitrator, to whom, together with ourselves, the within-mentioned matters shall be referred, according to the tenor and effect of the within rule (or within written bond or obligation, or indenture), on condition that he do, within — days from the date hereof, in writing, consent to act therein accordingly.

In witness, —, this — day of —, 19—.

1. See ante, vol. 4, § 2960.

**5226. Appointment by two arbitrators of a third to act with them.**

We, the within named arbitrators, in pursuance of the within written agreement, do hereby nominate and appoint — of — to be the third arbitrator to act with us in the consideration and determination of the matters referred to us according to the provisions thereof, provided he shall, in writing, accept the said office within — days from the date hereof.

In witness, etc.

1. See ante, vol. 4, § 2960.

**5227. Appointment by arbitrator of time for hearing.**

In the matter of the reference before me between — and —, I appoint the — instant, at — o'clock in the forenoon, at my office, and the — day of — next at the same time and place for proceeding in this reference. \_\_\_\_\_.

Dated — day of —, A. D. 19—.

To — and —, and their respective attorneys.

1. See ante, vol. 4, § 2956.

**5228. Enlargement of time for making award by arbitrators.**

In the matter of the arbitration between — and —. We, the undersigned, by virtue of the power given to us by an agreement dated the — day of —, 19—, whereby the matters in difference between the above-named parties were submitted for arbitration, do hereby enlarge (or further enlarge) the time for making our award, respecting the said matters, until the — day of — next, on or before which day our award shall be made and published.

As witness our hands this — day of —, 19—.

**5229. Statutory form of submission in Massachusetts.**

Know all men that —, of —, and —, of —, hereby agree to submit the demand, a statement whereof is hereto annexed (and all other demands between them, as the case may be), to the determination of —, —, and —, the award of whom, or of a majority of whom, being made and reported within one year from this day to the superior court for the county of —, the judgment thereon shall be final; and if either of the parties neglects to appear before the arbitrators, after due notice given him of the time and place appointed for hearing the parties, the arbitrators may proceed in his absence. Dated this — day of — in the year —.

Then the above-named — and — personally appeared (or the above-named — personally, and said — by —, his attorney, appeared, as the case may be), and acknowledged the above instrument by them signed to be their free act; before me, —, justice of the peace or special commissioner.

1. P. S. 1882, ch. 188, §§ 1, 2. The statute provides that all controversies which might be the subject of a suit at law or in equity may be submitted

to the decision of one or more arbitrators. The parties are required to appear before a justice of the peace, and acknowledge an agreement in substance as above. The award is submitted to the court, which may accept, reject or recommit it. Same in Rev. Laws 1902, ch. 194, § 2. See also, N. Y. Code Civ. Proc., §§ 2365-2386.

2. See ante, vol. 4, § 2942; Burns' (Ind.) Rev. Stat., 1908, §§ 875-882.

### 5230. Minnesota form of submission.

Know all men, that — of — and — of — have agreed to submit the demand described in the statement hereunto annexed (or, all demands existing between them, as the case may be) to the determination of (here insert the names of the arbitrators), the award of whom or by a majority of whom, being made and reported within — days from this date to the district court for the county of —, the judgment thereon shall be final.

Dated this — day of —, 19—.

In presence of — —, — —.

1. A form substantially like this must be followed. Rev. Laws 1905, § 4381.

### APPRAISERS' DECLARATION.

#### 5231. Declaration of appraisers under submission as to damages under fire insurance policy.

STATE OF —, }  
COUNTY OF —, } ss.

We, the undersigned, competent appraisers, do solemnly swear that we are not pecuniarily interested in or connected with the assured or the company insuring, and that we will act with strict impartiality in making an appraisal and estimate of the actual loss or damage to the property of —, insured by the company named in, and agreeably to, the foregoing appointment, and that we will return to said parties a true, just, and conscientious appraisal and estimate of loss or damage on the same, according to the best of our knowledge, skill, and judgment.

Witness our hands this — day of —, 19—.

Subscribed and sworn to before me, this — day of —, 19—.

**5232. Arbitrators' oath.**

You do solemnly swear faithfully and fairly to hear and examine the matters in controversy between —— and ——, to you submitted for arbitration, and to make a just award according to the best of your understanding; so help you God.

1. To be used if required by statute. See Ky. Code, § 451, sub. 2. See also, ante, vol. 4, § 2951.

**AWARDS.****5233. Commencement of award reciting submission by agreement or deed.**

Whereas by a certain written agreement or indenture, dated the —— day of ——, 19——, made between —— of ——, first party, and —— of ——, second party, reciting that (state matters submitted) it was agreed that the same (or that all matters in difference) should be referred to the arbitration and award and final determination of —— of ——, and —— of ——: Now we the said arbitrators, having\* taken upon ourselves the burden of the said arbitration, and having heard and duly considered all the allegations and evidence of the said respective parties of and concerning the said matters in difference, and so referred as afore-said, do make and publish this our award, in writing, of and concerning the said matters so referred to us, and do hereby award that, etc.

1. Statutes sometimes require awards to be witnessed; other times to be verified. The common law probably requires attestation at least.

2. See also, ante, vol. 4, § 2963.

**5234. Commencement of award on a submission by order of court.**

Whereas by an order of reference made by the —— court sitting in and for the county of ——, on the —— day of ——, 19——, all matters in difference in a certain cause then pending in the said court between ——, plaintiff, and ——, defendant, were referred to me, ——, in manner and form as by the said order, reference being thereto had, will more fully and at large appear, in order book —— at page ——, now the undersigned having, etc. (Conclude as in form 5233 above, after \*.)

**5235. Award of damages on submission by order of court.**

I find that the plaintiffs have sustained damages from the defendants, occasioned by the causes of action for which the said action was brought, to the amount of — dollars, and I assess the plaintiff's damages at the said sum of — dollars, and award and direct the defendants to pay the same to the plaintiffs.

1. See ante, vol. 4, ch. 67.

**5236. Award of entry of judgment when arbitrator empowered to make such entry.**

And I further award and direct that judgment be entered for the plaintiff in the said cause in said sum.

**5237. Award of mutual releases.**

And I further award and adjudge that the said —, party of the first part, and —, party of the second part, shall each on the requisition of the other of them, and at the costs and charges of the party requiring the same, sign, seal and as his respective act and deed deliver unto the other of them mutual releases of all claims and demands in respect of the matters in difference referred (or mutual general releases in writing of all and all manner of actions and suits, causes of action and suit, bills, bonds, covenants, debts, rent, specialties, controversies, trespasses, claims and demands whatsoever, from the beginning of the world until the time of the making of the aforesaid order of reference).

**5238. Award of sum in full of all demands.**

I award that the said — shall pay to the said — the sum of — dollars on demand, in full satisfaction of all claims and demands whatsoever which have been referred to me.

1. See ante, vol. 4, § 2969.

**5239. Award of release by one party.**

And I further award that upon payment of the sum awarded by me as aforesaid, the said — shall, if required, by and at the cost of the other party, execute and deliver to him a full and sufficient release of all claims and demands in respect of the matters in difference between said parties which have been referred to me as aforesaid.

**5240. Award that one party has no claim against the other.**

I award and adjudge that the said party of the first part has no claim or demand against the said party of the second part, in respect of any of the matters in difference between them.

1. See ante, vol. 4, § 2963.

**5241. Award of a sum of money to be in full satisfaction.**

And I award, order, and determine that the said damages and the said several sums of money awarded to be paid, and the several matters and things awarded and directed to be done by or with regard to the parties to this reference respectively as aforesaid, shall respectively be paid, received, done, accepted and taken as and for full satisfaction and discharge, and as a final end and determination of the several matters aforesaid, and in difference between the parties referred to me (or, of all matters in difference between the parties up to the time of the submission to arbitration).

1. See ante, vol. 4, § 2963.

**5242. Award of conveyance to be executed.**

I award and adjudge that the said second party shall, at the request and cost of the said first party, by a proper and effectual deed, convey a certain parcel of land, situate, etc., and described, etc., with the appurtenances thereto belonging, to the said first party, his heirs and assigns, or as he and they may direct.

1. See ante, vol. 4, §§ 2963, 2967.

**5243. Award on reference to settle terms of dissolution of partnership.**

I do make this my award of and concerning the matters so referred to me as aforesaid, as follows:

I do award, order, and adjudge that the said partnership shall be deemed and taken to have ended and been determined on and from the —— day of —— 19—.

I do award, order, and direct that the said first party, his executors or administrators, shall and may have, demand, and receive to his, her, or their own use, without interference of the said second party, all debts due and owing to the said partnership from

any person whomsoever; and shall and may use the name of the said second party either alone or jointly, in any action or suit to be commenced for the recovery of any such debt or demand.

I do award, order, and direct that the said first party, his executors or administrators, shall and do bear, pay and discharge all debts, demands, damages and claims whatsoever, due or owing by the said partnership, or which any person hath or can make against the said partnership, or the said second party in respect thereof; and shall and do indemnify and keep harmless the said second party from and against all such debts, demands, damages and claims; and from and against any loss and damages that may be incurred or sustained by the said second party by reason of his name being used in any such action or suit so to be commenced as aforesaid, in pursuance of the authority hereby given to the said first party, his executors and administrators; and that the said first party shall seal, execute, and deliver his bond to the said second party, in the penal sum of ——— dollars, conditioned to indemnify and keep harmless the said second party from and against the above-mentioned debts, demands, damages, claims, and loss.

I do award, order, and direct that the said second party shall, at any time, upon the request of the said first party, his executors or administrators, deliver up to the said first party, his executors or administrators, all and every, the books, papers and writings which may be in the custody, power or possession of him, the said second party, in any wise relating to or concerning the said business of the said copartnership.

And I further award and direct that the said first party shall, from time to time, give to the said second party an account in writing of his proceedings in the ascertainment and recovery of the said debts, within ——— weeks after a request in writing so to do shall have been served upon the said first party, on the part of the said second party; and shall also from time to time, as the said debts shall be respectively received, pay to the said second party one ——— part thereof, after having first deducted all necessary expenses incurred touching the ascertaining, collecting and recovering the same.

1. See ante, vol. 4, §§ 2944, 2963.

**5244. Award of costs.**

(1) I award that the costs of the cause be paid by the defendant to the plaintiff.

(2) I award that each party bear his own costs of the cause.

(3) I award and direct that the defendant do pay to the plaintiff the costs incurred by the plaintiff of, and incidental to, the reference and award, and I assess the amount of the said costs of the plaintiff at — dollars, and the costs of my award at — dollars.

(4) And I further award and direct that the plaintiff and defendant do each bear his own costs of the reference, and pay one-half the costs of the award; and if either party shall in the first instance pay the whole or more than half of the costs of the award, the other party shall repay him so much of the amount as shall exceed the half of the said costs.

(5) I award and direct that one moiety of the costs of the reference and award be borne and paid by —, and the other moiety by —.

1. See ante, vol. 4, §§ 2963, 2978.

**5245. Award under submission as to damage by fire.**

To the — Insurance Company: Having carefully estimated and appraised the loss or damage by fire to the property of —, agreeably to the foregoing appointment, we hereby report that we have appraised and determined the loss or damage thereon to be — dollars (\$—), as shown by statement of items herewith.

Witness our hands this — day of —, 19—.

1. See ante, vol. 4, §§ 2944, 2963; vol. 5, § 4314.

**5246. Award of arbitrators.**

Know all men by these presents that we, —, — and —, arbitrators to whom the matters in controversy existing between — and — were submitted by an agreement under their hands bearing date the — day of —, 19—, having heard the proofs and allegations of the parties, and examined the matters in controversy submitted by them, do award and order as follows,



namely, that the said —— shall pay, or cause to be paid, to said —— the sum of —— dollars, in full payment and discharge of the debt, demand, or claim of the last named of said parties against the former, the said sum to be paid within —— days from the date hereof; and the said arbitrators do further award and order that the said —— shall also pay to the said —— the sum of —— dollars, in full satisfaction of the costs, charges, and expenses incurred in or about this arbitration; and we do further award and order that the said parties shall within —— days from the date hereof execute to each other mutual releases of all actions or causes of action, claims or demands whatsoever, arising out of the matter in controversy submitted to us for arbitration.

In witness, etc.

1. See ante, vol. 4, ch. 67.

#### **5247. Award of balance due on account.**

Now we, the said arbitrators, having duly weighed and considered the allegations of the said parties, and the proofs, vouchers and documents which have been given in evidence before us, do hereby make and publish our written award concerning the matters referred to us, as follows: We find and award that the balance due from the said —— to the said ——, upon the settlement of the accounts between them which have been referred to us as aforesaid, is —— dollars, which we award and direct to be paid by the said —— to ——, on demand.

1. See ante, vol. 4, ch. 67.

### ASSIGNMENTS.

#### 5255. Assignment of several demands mentioned in schedule.

Agreement made this — day of —, 19—, between — of —, of the one part, and — of —, of the other part.

Whereas, the said — has for some time past carried on the trade or business of a — at — aforesaid, and in the course hereof the several persons mentioned in the schedule hereunder written have become indebted to him in the sums of money set opposite to their respective names, and he has contracted with the said — for the absolute sale to him of the said debts for the sum of — dollars:

Now these presents witness that in consideration of the sum of — dollars, the receipt whereof is hereby acknowledged, he, the said —, doth hereby assign unto the said —, his executors, administrators and assigns, all and singular the said debts and sums of money mentioned in the said schedule, which are now owing to the said —; to have, receive, and take the said debts and sums of money unto the said —, his executors, administrators and assigns, for his and their absolute use and benefit, as witness the hand of the said —.

In witness, etc.

1. See ante, vol. 2, ch. 33.

#### 5256. Assignment of wages due and to become due.

Know all men by these presents that I, — of —, in consideration of — dollars to me paid by — of —, the receipt whereof I do hereby acknowledge, do hereby assign and transfer to said — all claims and demands which I now have, and all which at any time between the date hereof and the — day of — next I may and shall have against — of —, for all sums of money due, and for all sums of money and demands which, at any time between the date hereof and the said — day of — next, may and shall become due to me for services as a —; to have and to hold the same to the said —, his executors, administrators and assigns forever. And I, the said —, do hereby

constitute and appoint the said — to be my attorney irrevocable in the premises, to do and perform all acts, matters and things touching the premises, in the like manner to all intents and purposes as I could if personally present.

In witness, etc.

1. Such assignment of future wages is sometimes prohibited by statute. See Burns' (Ind.) Rev. Stat., 1908, § 7987.

2. See ante, vol. 2, §§ 1434, 1441, 1442.

### 5257. Separate assignment of judgment.

Indenture made the — day of —, 19—, between — of —, of the first part, and — of —, of the second part.

Whereas, the said first party, on the — day of —, 19—, recovered by judgment rendered in the — court for the county of — against — the sum of — dollars: Now this indenture witnesseth, that the said first party, in consideration of — dollars to him duly paid, by these presents doth assign, transfer and set over unto the said second party, and his assigns, the said judgment and all sum and sums of money that may be had or obtained by means thereof, or on any proceedings to be had thereupon. And the said first party hereby constitutes and appoints the said second party or his assignee his true and lawful attorney irrevocable, with power of substitution and revocation, for the use and at the proper costs and charges of the said second party, to ask, demand and receive, and to sue out executions, and to take all lawful ways for the recovery of the money due or to become due on the said judgment; and on payment to acknowledge satisfaction, or discharge the same. And the said first party covenants that there is now due on the said judgment the sum of — dollars, with interest thereon from the — day of —.

In witness, etc.

1. See ante, vol. 2, §§ 1431, 1441, 1442.

### 5258. Marginal assignment of judgment.

For value received I hereby assign all my right, title and inter-

est in and to the annexed judgment to ——. Dated this ——— day of ———, 19—.

\_\_\_\_\_,  
Judgment Plaintiff.

Attest:

\_\_\_\_\_,  
Clerk ——— Court.

1. To be written on the margin of the order book or docket containing the judgment. Sometimes required by statute, as in Wisconsin, Stats. 1898, § 2906.

### 5259. Assignment of judgment debt—Short form.

This indenture made the ——— day of ———, 19—, between ——— of the first part and ——— of ——— of the second part, witnesseth:

Whereas, by a judgment dated the ——— day of ———, in an action in the ——— court of the state of ——— in which the said first party was plaintiff, and ——— was defendant, it was adjudged that the plaintiff recover against the said defendant the sum of ——— dollars and costs: and whereas, said judgment debt and costs with interest thereon are still owing to said ——— (the assignor); and whereas, the said ——— (assignee) has agreed to pay to the said ——— (assignor) the sum of ——— dollars upon having an assignment of said judgment with costs and interest. Now this indenture witnesseth that in consideration of the sum of ——— dollars to the said ——— (assignor), now paid by the said ——— (assignee), the receipt whereof is hereby acknowledged, said ——— hereby assigns to the said ——— (assignee) all the benefit and advantage of the said judgment and interest thereon with costs, and all other moneys recoverable under the said judgment, to hold the same to the said ———, absolutely. And the said ——— (assignor) hereby covenants with the said ——— (assignee) that said judgment is in full force and effect and that the whole of said sum of ——— dollars with interest and costs remains owing thereunder.

In witness, etc., with seal.

1. See ante, vol. 2, §§ 1441, 1442.

### 5260. Assignment by indorsement of the benefit of an agreement for a building lease.

Memorandum of agreement, made this ——— day of ———,

19—, between the within-named — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part. In consideration of — dollars this day paid by the said purchaser, the receipt whereof the said vendor hereby acknowledges, the said vendor hereby absolutely sells and transfers to the said purchaser the benefit of the within-written agreement, and of all covenants and stipulations entered into with the said vendor, and of all remedies for enforcing the same, and agrees, at the expense of the said purchaser, to do all necessary acts and things for obtaining from the within-mentioned — (owner of the land) a grant to the said purchaser of the lease by the said agreement agreed to be granted to the said vendor. And the said purchaser hereby agrees with the said vendor to perform and observe all the covenants, conditions and stipulations on the part of the said vendor contained in the said agreement, and to indemnify him from all actions, proceedings, damages, costs, expenses, claims and demands by reason of his the purchaser's nonperformance or nonobservance thereof.

As witness, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, ch. 137.

#### 5261. Assignment of mortgage by indorsement.

Know all men by these presents that — of — county, in the state of —, the within-named mortgagee, in consideration of the sum of — dollars to — in hand paid, the receipt whereof is hereby acknowledged, do (or does) hereby sell, assign, transfer, set over and convey unto —, his (or their) heirs and assigns, the within mortgage deed, the real estate conveyed, and the promissory note—, debts and claims thereby secured, and covenants therein contained:

To have and to hold the same, forever, subject, nevertheless, to the conditions therein contained.

In witness whereof, the said mortgagee— ha— hereunto set — hand—, this — day of —, 19—.

1. Some states (e. g., Wis. Stats. 1898, § 2210; Ky. Stats. § 4051A, Acts 1906) require separate assignments of mortgages to be regularly witnessed, acknowledged and recorded, the same as the mortgages themselves. See generally as to assignments of mortgages, ante, vol. 5, ch. 142, and as to assignments of chattel mortgages, ante, vol. 5, §§ 4726, 4842.

**5262. Assignment of mortgage by deed.**

Know all men by these presents, that I, — of — in the state of —, in consideration of — dollars received of — do hereby sell, transfer, alien and convey unto the said —, his heirs and assigns, the — note described in the within mortgage, and the said mortgage and — right, title and interest in and to the within mortgaged premises —.

Witness — hand and seal at — this — day of —, 19—.

In presence of —.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

2. As to form and essentials of assignments, in general, see ante, vol. 2, §§ 1441, 1442.

**5263. Assignment of mortgage by deed—Another form.**

Know all men by these presents, that I, — of —, the first party, in consideration of the sum of — dollars to me in hand paid by — of —, second party, the receipt whereof is hereby acknowledged, have and do hereby grant, bargain, sell, assign, transfer, and set over, and unto the said second party, his heirs, executors, administrators, and assigns, a certain indenture of mortgage bearing date the — day of —, 19—, made by — to me, and all my right, title, and interest to the premises therein described, as follows, to wit, etc.; which said mortgage is recorded in the recorder's office of the county of —, in the state of —, in book No. — of mortgages, at page —; together with the notes therein described, and the money due or to grow due thereon, with the interest: To have and to hold the same unto the said second party, his executors, administrators or assigns, forever; subject only to the provisos in the said indenture of mortgage contained. And I do for myself, my heirs, executors and administrators covenant with the said second party, his heirs, executors, administrators, and assigns, that there is now actually owing on said notes and mortgage, in principal and interest, the sum of — dollars, and that I have good right to assign the same. And I hereby make, constitute, and appoint the said second party my true and lawful attorney irrevocable, in my name or otherwise, but at his own proper costs and charges, to have,

use, and take all lawful ways and means for the recovery of the said money and interest, and, in case of payment, to discharge the same, as fully as I might or could do if these presents were not made. In witness whereof, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

#### **5264. Assignment of mortgage by deed—A short form.**

I hereby assign the within mortgage to (the assignee). Witness my hand and seal this —— day of ——, 19—.

(SEAL)

#### **5265. Assignment of mortgage by deed—Another form.**

Know all men by these presents, that I, —— of ——, the mortgagee named in a certain mortgage given by —— to me, dated the —— day of ——, 19—, and recorded with —— county deeds, lib. ——, fol. ——, in consideration of —— dollars paid by —— of ——, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said —— the said mortgage deed, the real estate thereby conveyed, and the note and claim thereby secured. To have and to hold the same to the said —— and his heirs or assigns, to his and their own use and behoof, forever, subject, nevertheless, to the conditions therein contained, and to redemption according to law.

In witness, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

#### **5266. Assignment of mortgage by deed—By receivers of a savings bank.**

Know all men by these presents, that we, —— and ——, receivers of the —— Savings Bank, the mortgagee named in a certain mortgage given by —— to said —— Savings Bank, dated the —— day of ——, 19—, and recorded with —— deeds, lib. ——, fol. ——, in consideration of —— dollars paid by —— of ——, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over unto the said —— the said mortgage deed, the real estate thereby conveyed, and the note and claim thereby secured; but without warranty or covenant of any kind,

and without recourse to the said — Savings Bank, or to us, or either of us, in any event.

To have and to hold the same to the said — and his heirs and assigns, to his and their own use and behoof, forever; subject, nevertheless, to the conditions therein contained and to redemption according to law, but without warranty or covenant as aforesaid. In witness whereof we, the said receivers of the said — Savings Bank, have hereunto set our hands and seals, this — day of —, 19—.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

### 5267. Assignment of mortgage by deed—Another form.

Know all men by these presents, that — of —, first party, for and in consideration of the sum of — dollars to him in hand paid by — of —, second party, the receipt whereof is hereby acknowledged, has and does hereby grant, bargain, sell, assign, transfer, and set over, unto the said second party a certain indenture of mortgage bearing date the — day of —, 19—, and recorded in the register's office of the county of —, state of —, in liber — of mortgages, at page —, with all and singular the premises and the note or obligation therein mentioned and described, and the moneys now due, and the interest that may hereafter grow due thereon: To have and to hold the same unto the said second party, his heirs and assigns, forever, subject only to the proviso in the said indenture of mortgage mentioned. And he doth hereby authorize and appoint the said second party his true and lawful attorney, irrevocably, in his name or otherwise, but at his proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the sum or sums of money now or hereafter to be due and owing, upon the said note and mortgage; and in case of payment to give acquittance or other sufficient discharge, as fully as he might or could do if these presents were not made; and he doth hereby, for his heirs, executors, and administrators, covenant, promise, and agree to and with the said second party that there is now due upon the said note and mortgage the sum of — dollars, and that he hath good right and lawful authority to grant,



bargain, and sell the same in manner aforesaid. Sealed and delivered the —— day of ——, 19—.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

**5268. Assignment of mortgage and bond by deed—Another form.**

Know all men by these presents, that I, —— of ——, for and in consideration of the sum of —— dollars, to me in hand paid by —— of ——, the receipt whereof is hereby acknowledged, have and do hereby grant, bargain, sell, assign, transfer, and set over, unto the said —— a certain indenture of mortgage, bearing date the —— day of ——, 19—, made by ——, mortgagor, to me as mortgagee, and recorded in the office of the register of deeds for the county of ——, in book ——, page ——, and the mortgaged premises therein described, with the appurtenances; and the bond or obligation in said mortgage mentioned, and thereby secured, and the warrant of attorney to confess judgment thereto annexed, and all moneys due and to grow due thereon. To have and to hold the same unto the said ——, his heirs, executors, administrators, and assigns, to his and their proper use, benefit, and behoof; subject to the provision or condition of redemption in said indenture of mortgage contained. In witness, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

**5269. Assignment of mortgage by deed—Another form.**

Know all men by these presents, that I, —— of ——, in the county of —— and state of ——, first party, in consideration of the sum of —— dollars to me in hand paid by —— of ——, in the county of —— and state of ——, second party, the receipt whereof is hereby acknowledged, have and do hereby grant, bargain, sell, assign, transfer, and set over, unto the said second party, a certain indenture of mortgage, bearing date the —— day of ——, 19—, made by —— of ——, in the county of —— and state of ——, and which said mortgage was recorded in the clerk's office of the county of ——, on the —— day of ——, in the year 19—, in book No. —— of mortgages, at page ——; together with the bond or obligation therein described, and the money due or to become due thereon, with the interest.

To have and to hold the same unto the said second party, his executors, administrators, or assigns, subject only to the provisos in the said indenture of mortgage contained; and I do hereby make, constitute, and appoint the said second party my true and lawful attorney, irrevocable, in my name or otherwise, but at his own proper costs and charges, to have, use, and take all lawful ways and means for the recovery of the said money, and interest, and, in case of payment, to discharge the same as fully as I might or could do, if these presents were not made. In witness, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

**5270. Assignment of mortgage by deed—With bond and warrant.**

Know all men by these presents, that I, —— of ——, the mortgagee named in the indenture of mortgage hereinafter mentioned, for and in consideration of the sum of —— dollars lawful money, unto me in hand paid by —— of ——, the receipt whereof is hereby acknowledged, do hereby grant, bargain, sell, assign, transfer, and set over unto the said ——, his heirs, executors, administrators, and assigns, the indenture of mortgage given and executed by —— of ——, dated the —— day of ——, 19——, and recorded in the office for recording of deeds in and for ——, in mortgage book No. ——, page ——; also the bond or obligation therein recited, and all moneys due or to become due thereon, with the warrant of attorney to the said obligation annexed; together with all rights, remedies, and incidents thereunto belonging; and all my right, title, interest, property, claim, and demand in and to the same. To have, hold, receive, and take all and singular the hereditaments and premises hereby granted and assigned, or mentioned and intended so to be, with the appurtenances, unto the said ——, his heirs, executors, administrators, and assigns, to and for his and their only proper use, benefit, and behoof, forever; subject, nevertheless, to the equity of redemption of said ——, the mortgagor, in the said indenture of mortgage named, and his heirs and assigns therein. In witness, etc.

**5271. Assignment of mortgage by deed.**

For value received, I, —— of ——, Wisconsin, hereby assign to —— of ——, Wisconsin, the within mortgage (or a certain

mortgage executed to — by — and wife, of — county, Wisconsin, the — day of —, 19—, and recorded in the office of the register of deeds of — county, Wisconsin, in vol. — of mortgages, on page —), together with the — and indebtedness therein mentioned. Witness my hand and seal this — day of —, 19—.

1. Rev. Stats. (Wis.) 1898, § 2210.

2. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

### 5272. Marginal assignment of mortgage.

For value received I hereby assign all my right, title and interest in and to the annexed mortgage to —, having herewith and hereby indorsed to said assignee the note (or notes) secured by said mortgage. Dated this — day of —, 19—.

Attest: —, Mortgagee.

—, Recorder or Register.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726.

### 5273. Assignment of mortgage as collateral security.

Know all men by these presents, that I, —, the mortgagee named in and present holder of a certain mortgage given by — to —, dated —, 19—, and recorded with — deeds, book —, page —, in consideration of — dollars paid by —, a corporation duly established by law in —, in the county of —, the receipt whereof is hereby acknowledged, do hereby assign, transfer, and set over to the said corporation the said mortgage deed, the note and claim thereby secured, and the real estate thereby conveyed. To have and to hold the same to the said corporation, its successors and assigns, to its own use and behoof, forever; subject, nevertheless, to the conditions therein contained and to redemption according to law. This assignment is made as collateral security for a note given by me to said corporation for the sum of — dollars, dated —, 19—, payable in — years after date, with interest at the rate of — per cent. per annum, payable semi-annually. And I, for myself, my heirs, executors, and administrators, covenant and agree to and with said corporation, its successors and assigns, that all taxes levied or assessed, whether on the land or on any interest therein, or on

the note secured by said mortgage, or on my note above mentioned or otherwise, in respect of said mortgage, mortgage note, or my said note, shall be paid by the mortgagor, or by me, without claim to reimbursement, and in such manner that said corporation, its successors and assigns, holders of said mortgage, shall receive the interest specified in said mortgage and in the note of me, said —, to it, net. And said corporation, its successors and assigns, holders of said mortgage, shall have full right before any default on part of me, the said —, to foreclose said mortgage in case of any breach in its condition, by sale, entry, or both methods, but shall not be obliged so to do, and, if cash is received by foreclosure, shall not be obliged to put the same at interest. And in case of any default by me in the payment of principal or interest when due and payable respectively on my said note, or in payment of said taxes, or of any part thereof, said corporation, its successors or assigns, holding said mortgage, or holding by foreclosure the real estate described therein or any part thereof, may sell said mortgage and mortgage note, or said real estate, by public auction in said —, without notice or demand, except giving notice of the time and place of sale once in each of three successive weeks in some one newspaper published in said —, and in its or their own name or names, or as my attorney for that purpose hereby duly authorized, convey the same absolutely and in fee simple to the purchaser accordingly; and out of the proceeds of such sale retain all sums then secured by this deed or by my said note (whether then or thereafter payable), with interest and all costs and expenses, and — per cent. of the purchase-money for the services of the party making the sale, paying the surplus if any to me or to the person thereto entitled on demand; and such sale shall forever bar me, and all persons claiming under me, from all right and interest in the premises, at law and in equity. And it is mutually agreed that the said corporation or its assigns may purchase at said sale, and that no other purchaser shall be answerable for the application of the purchase-money. It is also agreed that should said mortgage be not foreclosed or in process of foreclosure at the time of any default by me in punctual payment of interest or principal of my said note to said corporation, or in payment of said taxes, or any part there-

of, said corporation, its successors or assigns, may foreclose said mortgage if it sees fit, upon any breach of its condition, or complete any foreclosure begun, and that any foreclosure made or completed after default by me, good against the mortgagor, shall be good against me and those claiming under me, without notice or demand, and shall absolutely bar all my rights to redeem, whether the result of such foreclosure is to vest the title of the real estate in the holders of the mortgage, who are hereby expressly authorized to buy at any foreclosure, or in a third party. Said mortgage has been extended to the — day of —, 19—, by extension to be recorded herewith.

In witness whereof I, the said —, have hereunto set my hand and seal this — day of —, in the year 19—.

1. See Pledges and Collateral Securities, post, 6135 et seq.

2. See ante, vol. 2, §§ 1441, 1442; vol. 4, ch. 70; vol. 5, §§ 4725, 4726.

#### **5274. Vote of corporation confirming assignment of mortgage by its treasurer.**

At a meeting of the trustees of the — Savings Bank held on the — day of —, 19—, it was voted that a certain assignment made by this corporation to — of —, of a note and mortgage given to this corporation by —, dated the — day of —, and recorded with — deeds, lib. —, fol. —, having been executed by the treasurer of this corporation under authority of a general vote passed the — day of —, 19—, though not made in precise conformity thereto, be and the same is hereby adopted, ratified, and confirmed. A true copy from the records. Attest: —, clerk of the corporation.

1. See ante, vol. 1, § 546.

#### **5275. Assignment of chattel mortgage by indorsement.**

Know all men by these presents, that I, — of —, in the county of — and state of —, in consideration of — dollars paid to me in full satisfaction by — of —, in the county of — and state of —, do hereby assign, transfer, and convey unto the said — and his assigns, forever, all my right, title, interest, and estate in and to the property described in

the within mortgage, and all my rights and privileges under said mortgage.

In witness, etc.

1. See ante, vol. 2, §§ 1441, 1442; vol. 5, §§ 4725, 4726, 4842.

**5276. Assignment of agreement for lease—After recital of parties.**

Whereas by an agreement in writing dated the —— day of ——, made between —— as lessor, of the one part, and ——, of the other part, the assignor herein, the said lessor agreed with the assignor to grant a lease of (parcel described as in agreement) for the term of —— years, at the yearly rent of —— dollars, and it was agreed that the lease should contain the covenants, conditions and agreements usually inserted in leases of a similar nature; And whereas —— has agreed with —— (the assignee) to sell to him the benefit of said agreement at the price of —— dollars:

Now in consideration of —— dollars paid by said —— (assignee) the receipt whereof is hereby acknowledged, the said —— (assignor) hereby assigns to —— (the assignee) the said recited agreement and the benefit thereof, subject to the payment of the rent and the performance of the covenants, conditions and stipulations therein contained.

The assignor hereby covenants with the said assignee that he has not done or suffered any act whereby he is prevented from assigning the said agreement and that he will use his best endeavor to procure a lease of the premises to said assignee.

The assignee hereby covenants with the assignor to perform and observe all the covenants, conditions and stipulations in the recited agreement expressed or referred to and on his part to be observed. In witness, etc.

(Signatures and seals of both parties.)

1. See Landlord and Tenant.

2. See ante, vol. 2, §§ 1270, 1278, 1441, 1442; vol. 5, §§ 4550, 4570-4575.

**5277. Agreement to assign lease.**

Whereas —— did heretofore, to wit, on the —— day of ——, 19——, demise and lease unto ——, the following described real

estate, to wit: (here insert description) as shown by the lease attached hereto and made a part hereof. Now, in consideration of the sum of —, the receipt of which is hereby acknowledged, the said — hereby agrees to assign unto — all of his interest, right and title in and to said lease, and in and to the premises covered by said lease, during the residue of the terms of said lease, subject to the rents, covenants and agreements therein contained.

Witness our hands and seals, etc.

1. See ante, vol. 2, §§ 1270, 1278, 1441, 1442; vol. 5, §§ 4550, 4570-4575.

### **5278. Assignment of agreement for lease indorsed thereon.**

Memorandum of agreement made this — day of — between the within named —, herein called the vendor, of the one part, and —, herein called the purchaser.

In consideration of — dollars paid by said purchaser to the said vendor, the receipt whereof the vendor hereby acknowledges, the said vendor hereby sells and transfers to the said purchaser the benefit of the within-written agreement and of all remedies for enforcing the same, and agrees, at the expense of the purchaser, to procure from the within-mentioned lessor a grant of said lease to the said purchaser, and the said purchaser agrees with the said vendor to perform and observe the covenants, conditions and stipulations contained in the said agreement, and to indemnify the said vendor from all liability in respect thereof.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 2, §§ 1270, 1278, 1441, 1442; vol. 5, §§ 4550, 4570-4575.

### **5279. Assignment of lease by deed poll.**

Know all men by these presents that I, — of —, in consideration of the sum of — dollars to me paid by — of —, the receipt whereof is hereby acknowledged, do assign unto the said — a certain lease bearing date the — day of —, in the year 19—, made by — to —, and recorded in the registry of deeds for the county of —, book —, page —, of certain premises situate at —, in the county of —, for the term of — years, of which term there now remains the unexpired residue of — years. To hold the same unto the said —, his

executors, administrators, and assigns, from the — day of —, 19—, for and during all the residue and remainder of said term of — years mentioned in said lease, subject, nevertheless, to the rents, covenants, conditions, and provisions therein mentioned; and I do hereby covenant with the said —, his executors, administrators and assigns, that the covenants and agreements in said lease contained on the part of the lessee to be observed and performed have been up to the date hereof duly observed and performed, and that the said assigned premises are now free and clear of all charges and encumbrances, grants, leases, taxes and assessments whatsoever, made or suffered by said lessee.

In witness whereof, I hereunto set my hand and seal this — day of —, 19—.

1. See ante, vol. 5, ch. 137.

**5280. Confirmation of lease by lessor after lessee has incurred forfeiture by breach of covenants and conditions thereof.**

Indenture made the — day of —, between — of —, of the one part (lessor), and — of — (assignee of lease), of the other part:

Whereas the said — by lease dated the — day of —, demised to — of — the premises therein particularly described, situate in — county, state of —, herein called the demised premises, to hold for the term of — years from the — day of —, subject to the payment of rent thereby reserved and the covenants on the part of said lessee and conditions therein contained.

And whereas said lease contained a covenant on the part of said lessee not to assign or underlet the demised premises, or any part thereof, without the assent in writing of the said lessor, to whom was given the power to re-enter upon the demised premises in the event of any breach of any of said covenants and conditions on the part of said lessee to be observed.

And whereas by an indenture dated the — day of — the said lessee assigned to the said —, party to this indenture, the demised premises for the residue of the term of said lease, subject to the rent reserved and the conditions contained in said lease.



And whereas the consent in writing of the said — (lessor), to the said assignment had not been obtained.

And whereas the said — (lessor) is advised that by reason of such assignment he is entitled to enforce the power of re-entry given by said lease.

And whereas the said lessor had agreed with the said assignee to confirm the said lease.

Now this indenture witnesseth that pursuant to said agreement the said — (lessor) hereby confirms unto —, the said assignee, the said lease and the demised premises: To hold the same unto the said — (assignee), his executors, administrators and assigns for the residue of said term of — years, subject to the yearly rent of — dollars reserved, and to the covenants and conditions in said lease contained.

The said — (lessor) hereby releases the said assignee from all rights of action, claims and demands in respect of any breach of any of said covenants, but so that the said covenants and the said power of re-entry shall in all other respects remain unaffected by these presents. In witness, etc.

(Signatures and seals of both parties.)

**5281. Assignment of leasehold by one partner to another on dissolution of partnership—After recitals of partners and of lease and of dissolution of partnership.**

Whereas it was by the articles of partnership between said parties declared and agreed that at the expiration or sooner determination of the said partnership, the said — (continuing partner) should purchase the share and interest of the said — (retiring partner) in the leasehold premises where the said business might then be carried on, at a price to be determined by valuation.

And whereas said price has been determined to be the sum of — dollars.

Now in consideration of — dollars paid by the said — (continuing partner) to the said — (retiring partner), the said — (retiring partner) hereby assigns unto the said — (continuing partner) all the undivided moiety or share of the said — (retiring partner) under the said articles of partnership or

otherwise, of and in the premises comprised in said lease. To hold the same to the said — (continuing partner) for the unexpired residue of the said term of — years created by the lease, subject to the rent reserved by and the covenants, conditions and stipulations contained in the lease, and henceforth on the lessee's part to be paid, performed and observed. And the said — (continuing partner) covenants with said — (retiring partner) henceforth during the continuance of said lease to pay the rent and observe the covenants, conditions and stipulations therein contained, and to keep indemnified the said retiring partner against all actions, claims and demands whatsoever in said lease.

In witness, etc.

1. See Partnership.
2. See ante, vol. 5, § 4571.
3. See ante, vol. 5, chaps. 137, 152.

#### 5282. Assignment of lease by indorsement.

This indenture, made the — day of —, 19—, between the within-named — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part, witnesseth, that in consideration of — dollars to him paid by the said purchaser, and of the covenants of the said purchaser hereinafter contained, the said vendor hereby assigns unto the said purchaser, his executors, administrators, and assigns, all that tenement demised to the said vendor by the within-written lease, with all rights, easements, and appurtenances as within mentioned; and all the vendor's estate, right, title and interest in and to the said premises: To have and to hold the same unto the said purchaser, his executors, administrators and assigns, for the residue of the term granted by said lease, at the rent thereby reserved, and subject to the covenants by the lessee and conditions therein contained, and thenceforth to be performed and observed by the said purchaser; and the said purchaser hereby for himself, his heirs, executors and administrators, covenants with the said vendor, his executors and administrators, that he and they will henceforth pay the rent reserved, and perform the covenants on the part of the lessee contained in said lease, and will keep the said vendor, his executors and administrators indemni-

fied against all actions, claims, and liability for the nonpayment of said rent, or breach of the said covenants, or any of them. In witness, etc.

1. See Landlord and Tenant.
2. See ante, vol. 5, §§ 4570-4575.

### 5283. Assignment of leasehold estate.

This deed, made this —— day of ——, 19—, by —— of the city of —— and state of ——, witnesseth:

That in consideration of the sum of —— dollars the receipt whereof is hereby acknowledged, the said —— hereby grants and assigns unto ——, of the city of —— and state of ——, his personal representatives and assigns, all that piece or parcel of ground situate and lying in said city of —— and described as follows, that is to say: (here fully describing the property), the same being the same piece or parcel of ground which, by lease dated the —— day of ——, 19—, and recorded in ——, was demised and leased unto the said —— by —— for the term and at the rental therein expressed, together with the improvements thereon, and the rights and appurtenances thereto belonging or in any wise appertaining, to have and to hold the above-granted property unto the said ——, his personal representatives and assigns, during all the residue of the term of years yet to come and unexpired therein, with the right and benefit of renewal of said term forever; subject, however, to the payment of the annual rent of \$—— reserved in the aforesaid lease, to whomsoever the same may be payable, in equal semiannual instalments, on the first days of —— and —— in each and every year.

And the said —— hereby covenants that he will warrant specially the property herein conveyed, and that he will execute such further assurances of said land as may be requisite.

Witness the hand and seal of the said grantor the day and date first above written.

Attest:

————— (SEAL.)

1. See ante, vol. 5, §§ 4570-4575.

### 5284. Assignment of leasehold estate by lessee's executors indorsed on lease.

This indenture, made the —— day of ——, between —— of

—, and — of —, executors of the will of the within-named —, lessee, which will was duly proved in the probate court for the county of — on the — day of —, parties of the first part, and — of —, party of the second part, witnesseth, that in consideration of — dollars paid by the said — to the said (executors), the receipt whereof is hereby acknowledged, they, the said — and —, as such executors as aforesaid, do hereby assign unto the said —, his executors, administrators and assigns all the hereditaments and premises comprised in and demised by the within-written lease: To have and to hold the same unto the said —, his executors, administrators, and assigns, henceforth for the residue of the term of — years granted by said lease, at the rent thereby reserved, and subject to the covenants by the lessee, and conditions therein contained, and henceforth to be performed and observed. And the said — doth hereby covenant with the said (executors) that he, the said —, his executors, administrators, and assigns, will henceforth pay the rent reserved by the said lease, and perform all the covenants by the lessee therein contained, and will keep the said (executors), their successors in their trust, and the estate of the said lessee, indemnified against all actions, suits, expenses and claims on account of nonpayment of the said rent, or the breach of the said covenants, or any of them.

In witness, etc.

1. See ante, vol. 5, §§ 4570-4575.

### **5285. Assignment of lease by indorsement with full covenants.**

I, — of —, in the county of — and commonwealth of —, the lessee named in the within lease from — to me, dated —, 19—, and recorded with — deeds, book —, page —, in consideration of — dollars, and of the covenants hereinafter contained, do hereby assign, transfer, and set over to — of —, in the county of —, the said lease, the premises hereby demised, and all right, title and interest in and under the same. And I, the said assignee, in consideration of the foregoing assignment, hereby covenant with the said assignor that I will pay the rent which may hereafter become due according to the terms

of said lease, and perform all the covenants and stipulations in said lease contained which are to be performed by the lessee.

In witness, etc.

1. See ante, vol. 5, ch. 137.

2. See ante, vol. 5, §§ 4570-4575.

#### 5286. Assent of lessor to assignment.

I, —, the lessor named in the foregoing lease, hereby assent to the above written assignment thereof.

\_\_\_\_\_.

#### 5287. Assignment of legacy, payable upon death of life tenant.

This indenture made the — day of —, 19—, between — of —, hereinafter called the assignor, of the one part, and — of —, hereinafter called the assignee, of the other part, witnesseth: That in consideration of — dollars paid by said assignee, the receipt whereof the assignor hereby acknowledges, the assignor as beneficial owner hereby assigns unto the assignee all that legacy or sum of — dollars to which the assignor is entitled upon the death of —, tenant for life under the will dated the — day of —, of —, testator, late of —, who died on the — day of —, and whose will was duly proved and allowed by the probate court of the county of —, in the state of —, on the — day of —. To hold the same unto the said —, assignee aforesaid, absolutely, subject to any legacy tax or duty which may become payable thereon upon the death of said tenant for life.

In witness, etc.

\_\_\_\_\_,  
Signature of Assignor.

1. The expectancy of an heir is not assignable. *Elliott v. Leslie*, 124 Ky. 553, 99 S. W. 619.

2. See also, ante, vol. 2, ch. 33.

#### 5288. Notice by assignee of legacy to testator's executor.

To the executor of the will of —, late of —, deceased: I, the undersigned, — of —, hereby give you notice that by an indenture dated the — day of —, made between me, the said —, and —, legatee, under the will of said testator, the

legacy or sum of —— dollars bequeathed to said ——, legatee, was assigned to me absolutely, and I hereby request you to pay the same to me as and when the same shall become payable, together with such interest as may have accrued at the date of payment.

Dated the —— day of ——, 19——.

\_\_\_\_\_,  
Signature of Assignee.

1. See ante, vol. 2, ch. 33.

### 5289. Assignment of bond.

This indenture, made this —— day of ——, 19——, between —— of ——, of the first part, and —— of ——, of the second part: Whereas —— (obligor), by a bond under his hand and seal, dated ——, 19——, became bound to said first party in the penal sum of —— dollars, with a condition that said bond should be void on payment by said —— (obligor), of the sum of —— dollars with interest thereon: And whereas the sum of —— dollars with interest thereon from ——, 19——, remains owing to the said —— (assignor) on said bond. And whereas the said —— (assignee) has agreed to pay to the said —— (assignor), the sum of —— dollars upon having as assignment of said recited bond and interest due and to become due thereon. Now this indenture witnesseth that in consideration of the sum of —— dollars to the said —— (assignor), now paid by the said —— (assignee), the receipt whereof is hereby acknowledged, the said —— (assignor), hereby assigns unto the said —— (assignee), all that recited bond with the said principal sum of —— dollars thereby secured and all interest now due and hereafter to become due and payable thereon, to hold the same to said —— (assignee) absolutely; and the said —— (assignor) hereby covenants with the said —— (assignee) that the said principal sum of —— dollars, and interest are still owing, and the said bond is now in full force and valid.

1. See Bonds.

2. See ante, vol. 4, §§ 3510-3513.

### 5290. Notice to obligor of assignment of bond.

To Mr. ——, obligor in a bond given by you to ——, obligee

or creditor: I, the undersigned, — of —, hereby give you notice that by an indenture made between me and said — (obligee), dated, etc., the said — (obligee) assigned to me absolutely the principal sum of — dollars and interest due from you to said — (obligee), and secured by a bond under your hand and seal, dated the — day of —, and I require you in due course to pay such principal sum and all interest due and to become due thereon to me.

Dated the — day of —, 19—.

\_\_\_\_\_,  
Signature of Assignee.

1. See ante, vol. 4, §§ 3510-3513.

### 5291. Assignment of good will and book debts of dairy business.

Indenture made the — day of —, 19—, between — of — in the county of —, hereinafter called the vendor, of the one part, and —, of said —, hereinafter called the purchaser, of the other part:

Whereas the vendor has for some years carried on the business of a dairyman and seller of dairy produce, and especially of milk, butter and eggs, at premises owned and occupied by him for his said business on — street in said town; and has agreed to sell his said business and the good will thereof to said purchaser for the price of — dollars in cash, and to grant to said purchaser a lease of the building and premises heretofore occupied by the vendor at the annual rent of — dollars, payable quarterly, for the term of — years from the date hereof.

Now this indenture witnesseth that pursuant to said agreement and in consideration of the said sum of — dollars paid by the purchaser, the receipt whereof is hereby acknowledged, the vendor hereby assigns to the purchaser all that business of a dairyman and dealer in milk, butter, eggs and general dairy produce heretofore carried on by him at his place of business aforesaid, and the good will and the full benefit thereof; and the right to use the trade name heretofore used for his said business, "The — Dairy," for the period of — years. The vendor also assigns to the purchaser all subsisting contracts and engagements entered into by him, and all book debts now owing to him in con-

nection with said business. To hold the premises unto the purchaser and his assigns absolutely.

The lease upon the terms before mentioned shall be executed immediately after the execution of this indenture.

The vendor hereby covenants with the purchaser that he will not directly, indirectly, solely or jointly as principal, agent, manager or otherwise, be concerned or interested in the same business heretofore carried on by him, within — miles from the town aforesaid for — years from the date hereof, nor permit his name to be used in connection with such business. The vendor shall pay all debts and liabilities which on the — day of — were due from him or had previously been incurred by him, and shall keep the purchaser and his assigns indemnified against claims, actions and expenses by reason of the nonpayment of any such debt or liability.

The purchaser and his assignees will pay and discharge all debts and liabilities and perform all contracts and agreements incurred or entered into by the vendor in relation to the said business since the — day of —, or which may hereafter become payable in consequence of anything omitted or suffered by the vendor in relation to said business since that date, and shall keep the vendor indemnified against all actions, damages and expenses arising by reason of the nonpayment of any such debts or the nonperformance of any such contract or engagement.

In witness, etc.

\_\_\_\_\_,  
\_\_\_\_\_,

Signatures of both parties.

1. See also, Bills of Sale, Agreements to Sell, and Conditional Sales.
2. See ante, vol. 2, §§ 825, 826, 827; vol. 5, § 4985.

## 5292. Assignment of agreement for purchase.

Indenture made the — day of —, 19—, between — of —, of the first part, and — of —, of the second part, witnesseth:

Whereas by an agreement dated —, 19—, between — (vendor), of the one part, and the said — (assignor), of the other part, the said — (vendor), for the consideration therein



mentioned, agreed to sell to the said — (assignor), all that parcel of land (or personal property) therein described for the price of — dollars. And whereas no part of the purchase-money has been paid and the said — (assignor), has agreed with the said — (assignee), for the sale to him of the benefit of said agreement: Now this indenture witnesseth that in consideration of the sum of — dollars to the said — (assignor), now paid by said — (assignee), the said — (assignor), hereby assigns unto the said — (assignee) all that recited agreement of sale and all the estate, right, title and claim of said —, (assignor) of, in, or to the said parcel of land (or personal property) therein described, to hold the said premises (or personal property) unto the said — (assignee), subject to the stipulations hereinafter mentioned. And the said — (assignee) hereby covenants with the said — (assignor) that the said — (assignee) will pay, perform and observe all the stipulations, provisos and conditions respectively which are mentioned or contained in the said recited agreement and on the part of the said — (assignor), are thereby agreed to be performed and observed; and will keep the said — (assignor) indemnified against all actions, claims and demands by reason of the nonobservance of the said agreement or otherwise in relation thereto.

In witness, etc.

\_\_\_\_\_,  
\_\_\_\_\_,

Signatures of assignor and assignee.

1. See ante, vol. 2, § 1433.

### 5293. Assignment of personal property as collateral security.

This indenture, made this — day of —, 19—, between — of —, of the one part, and — of —, of the other part, witnesseth:

Whereas said first party is indebted to the second party upon an account due and payable —, 19—, said first party in consideration of the premises and to secure the payment thereof does by these presents assign, transfer and set over to said second party all his right, title and interest in and to the following described

goods and chattels (here insert description of goods). In case of default in the payment of said indebtedness at the time when the same shall become due, the second party, or his assigns are hereby authorized to sell said good and chattels at public sale on ——— days' notice thereof to the highest bidder for not less than ——— per cent. of the value hereinbefore set out, and from the proceeds thereof, after deducting the necessary costs and expenses, to reimburse himself for all sums that shall be due him from the first party and to pay over the surplus, if any, to the said first party. If said first party, or his legal representative, shall pay or cause to be paid all sums at the times and according to the stipulations herein stated, then this assignment shall be void and of no effect.

In witness whereof, etc.

1. See also, *Pledges and Collateral Securities*.
2. See also, ante, vol. 2, § 1433, and vol. 4, § 3035.

#### 5294. Assignment of claim for damages.

Know all men by these presents that I, ———, in consideration of the sum of ——— dollars, and other good and valuable consideration, the receipt whereof is hereby acknowledged, do hereby sell, assign, transfer, and deliver over unto ———, his executors, administrators and assigns, and to his and their own proper use and benefit, any and all sums of money due or owing to me, and all claims, demands, and cause or causes of action of any kind whatsoever, which I have had, or now have, or may have against ——— by reason of (here state facts from which claim arises). And I hereby constitute and appoint the said ———, his executors, administrators and assigns my true and lawful attorney and attorneys, with full power of substitution and revocation, for me and in my name, but for the sole use of the said ———, his executors, administrators and assigns, to ask, demand, sue for, in his own name and right, collect, receive, compound and give acquittances for the said claim or claims, or any part thereof.

In witness, etc.

(Dated.)

\_\_\_\_\_,  
(Add acknowledgment.)

1. Choses in action involving claims as to property rights are commonly

assignable. Those involving claims as to injuries to the person or reputation are ordinarily nonassignable. See ante, vol. 2, § 1440.

2. See also, Attorney and Client, and Power of Attorney.

### 5295. Assignment of copyright.

Whereas the undersigned of the state of —, county of —, and city of —, did obtain from the United States a copyright for a work entitled —, the certificate for which bears date of — day of —, 19—.

Now, therefore, for a valuable consideration, to wit, — paid to me, receipt of which is hereby acknowledged, I hereby assign, sell and set over unto —, all of my right, title and interest in and to said book (or design, etc., as the case may be) as secured to me by said copyright; the same to be enjoyed by said — for his own use and to the use of his heirs and legal representatives to the full end of the term for which said copyright was granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment not been made.

In testimony whereof, etc.

Signed and delivered in the presence of

\_\_\_\_\_  
\_\_\_\_\_

1. See ante, vol. 2, § 1210.

2. See post, form 5302.

### 5296. Assignment of entire interest in invention before issue of letters patent.

Whereas I, — of —, county of —, state of —, have invented a certain new and useful improvement in —, for which I am about to make application for letters patent of the United States; and whereas, — of —, county of —, state of —, is desirous of acquiring an interest in said invention, and in the letters patent to be obtained therefor:

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of — dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said — (inventor), have sold, assigned, and transferred, and

by these presents do sell, assign, and transfer, unto the said —— (purchaser) the full and exclusive right to the said invention, as fully set forth and described in the specification prepared and executed by me on the —— day of ——, 19——, preparatory to obtaining letters patent of the United States therefor; and I do hereby authorize and request the Commissioner of Patents to issue the said letters patent to the said purchaser as the assignee of my entire right, title, and interest in and to the same, for the sole use and behoof of the said purchaser and his legal representatives.

In testimony whereof, I have hereunto set my hand and affixed my seal this —— day of ——, 19——. In presence of (two witnesses).

1. This and the three succeeding forms are taken from the Rules of Practice in the United States Patent Office, revised July 17, 1907, issued by the Patent Office. Rule 197 of the Patent Office, revised July 17, 1907, provides that an assignment, grant or conveyance of a patent must be recorded in the Patent Office within three months from date thereof.

#### **5297. Assignment of entire interest in letters patent.**

Whereas I, —— of ——, county of ——, state of ——, did obtain letters patent of the United States for an improvement in ——, which letters patent are numbered ——, and bear date the —— day of ——, in the year 19——; and whereas I am now the sole owner of said patent and of all rights under the same; and whereas, —— of ——, county of ——, state of ——, is desirous of acquiring the entire interest in the same: Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of —— dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said —— (inventor), have sold, assigned, and transferred, and by these presents do sell, assign, and transfer, unto the said —— (purchaser), the whole right, title and interest in and to the said improvement in ——, and in and to the letters patent therefor aforesaid; the same to be held and enjoyed by the said —— (purchaser) for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely

as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, I have hereunto set my hand and affixed my seal at —, in the county of — and state of —, this — day of —, 19—. In presence of (two witnesses).

#### **5298. Assignment of undivided interest in letters patent.**

Whereas I, — of —, county of —, state of —, did obtain letters patent of the United States for an improvement in —, which letters patent are numbered —, and bear date the — day of —, in the year 19—; and whereas, — of —, county of —, state of —, is desirous of acquiring an interest in the same: Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of — dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said — (inventor), have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said — (purchaser) the undivided one-half part of the whole right, title and interest in and to the said invention, and in and to the letters patent therefor aforesaid; the said undivided one-half part to be held and enjoyed by the said — for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, etc. In the presence of, etc. (as in preceding form).

1. See ante, vol. 3, § 1900.

#### **5299. Assignment of territorial interest after grant of patents.**

Whereas I, — of —, county of —, state of —, did obtain letters patent of the United States for improvement in —, which letters patent are numbered —, and bear date the — day of —, in the year 19—; and whereas I am now the sole owner of the said patent, and of all rights under the same in the below-recited territory; and whereas, — of —, county of

—, state of —, is desirous of acquiring an interest in the same:

Now, therefore, to all whom it may concern, be it known that for and in consideration of the sum of — dollars to me in hand paid, the receipt of which is hereby acknowledged, I, the said — (inventor), have sold, assigned and transferred, and by these presents do sell, assign and transfer, unto the said — (purchaser) all the right, title and interest in and to the said invention, as secured to me by said letters patent, for, to, and in the state of —, and for, to, or in no other place or places; the same to be held and enjoyed by the said — (purchaser) within and throughout the above-specified territory, but not elsewhere, for his own use and behoof, and for the use and behoof of his legal representatives, to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by me had this assignment and sale not been made.

In testimony whereof, etc. In presence of, etc. (as in second form above).

### **5300. Assignment of patent for fixed sum and royalty.**

Agreement made this — day of —, between — of —, hereinafter called the patentee, of the one part, and — of —, hereinafter called the assignee, of the other part.

Whereas the said patentee has obtained letters patent of the United States for a certain new and useful improvement in —, which letters are numbered —, and are dated —, 19—, and the said assignee desires to purchase the exclusive use of the same for the term of said patent:

Now this agreement witnesseth, that in consideration of the sum of — dollars paid to the patentee by the assignee upon the execution of this agreement, the receipt whereof is hereby acknowledged, and the further payments hereinafter mentioned, the patentee hereby sells to the assignee the said patent for the remainder of the term thereof, subject to the stipulations and provisions hereinafter contained.

The assignee shall pay to the patentee, during the residue of

the term of the said patent, the sum of — dollars for every — manufactured according to the said patent, and sold by the assignee.

Accounts between the said parties shall be settled half-yearly, on the — day of — and the — day of —.

If the assignee shall discontinue the manufacture of goods under said patent, or shall not manufacture and sell at least — in any one year, as shown by two successive half-yearly accounts, the patentee shall be at liberty, by notice in writing given to the assignee, or left at his usual or last place of abode, to determine this agreement, and this assignment shall thereupon be void.

In case the letters patent shall be infringed, the patentee shall forthwith, after notice of such infringement, at his own cost, take all necessary proceedings for effectually protecting and defending the same; and in default of his so doing, the assignee shall be at liberty, by notice in writing, given to or left at the usual or last known place of business or residence of the patentee, to determine this agreement.

If the said letters patent shall be judicially determined to be invalid, then this agreement shall forthwith become void, but without prejudice to the right of the patentee to recover any moneys due to him thereunder.

In witness, etc.

**5301. Assignment of right to patent an invention in foreign countries with power to dispose of it, the assignee paying a moiety of net profits.**

Agreement made this — day of —, 19—, between — of —, hereinafter called the patentee, and — of —, hereinafter called the assignee, which expressions patentee and assignee shall include executors, administrators and assigns of the respective parties, where the context so requires or admits.

Whereas the patentee obtained letters patent of the United States, dated —, 19—, and numbered —, for an improvement in —; and whereas it has been agreed between the parties hereto that the assignee shall have the right of procuring patents for using the said invention in the countries of, etc., or in such of them or such parts thereof as he shall think fit, upon the terms

and in the manner hereinafter expressed, and that the sole right of obtaining such patents shall be assigned to the assignee :

Now this indenture witnesseth, that pursuant to such agreement and in consideration of —— dollars, the receipt whereof is hereby acknowledged, and in consideration of the covenants and agreements on the assignee's part hereinafter contained, the patentee hereby grants and assigns unto the assignee the full and exclusive right, in the name and as the attorney of the patentee, or otherwise, as the case may require, but at the cost of the assignee, to apply for and obtain patents or other like grants or instruments for vesting in the assignee, or in such other person or persons as he shall think fit, the sole and exclusive right and privilege of making, using, and vending the said invention in the said several countries of, etc., or any of them; and also the right and power of the patentee, as such inventor or otherwise, to work, use and vend the said invention in the said several countries: To hold the same unto the assignee unto his absolute use and benefit.

And the patentee and assignee each covenants with the other in the manner following:

The patentee shall forthwith furnish to the assignee a true and correct copy of the specification of the said invention as filed or about to be filed, and also a full and perfect description of the said invention and the mode of working the same, so as to enable him to obtain good and valid patents in said several countries or any of them.

In case any such patent shall be granted or made to or in favor of the patentee, then and in such case he shall forthwith transfer the same, and all benefit thereof, unto the assignee, or as he may direct, and in the meantime shall stand possessed thereof in trust for him.

The patentee shall at all times do everything which may be necessary for the purpose of enabling the assignee to obtain such patents in the said several foreign countries, and the full benefit of all the rights and premises hereinbefore assigned to him, or agreed so to be.

The assignee shall be entitled to dispose of, or deal with, all the patents and premises so assigned, or agreed so to be, as the



sole and absolute owner thereof, without being subject to any control of or by the patentee.

The assignee shall pay to the patentee one-half part of all the net gains and profits which the assignee shall at any time obtain from such patents or from said invention, or from any sales or licenses, or other dealings with the same, after paying and deducting all costs, charges, and expenses whatsoever which the assignee may pay or incur in or about the obtaining or procuring such patents, or in or about bringing the said invention into use in the said several countries, or any of them, together with interest at the rate of — per cent. per annum upon such costs, charges and expenses from the time of the payment thereof; and shall on the — day of — in each year, when the amount of such net gains and profits in the hands of the assignee shall be — dollars or upward, or within — days thereafter, pay over one-half part of such amount to the patentee.

The assignee shall keep true and correct accounts of such receipts and disbursements, and at any time, on demand, shall furnish to the patentee a copy of the same, and permit him to inspect all documents in possession of the assignee relating to the premises.

Nothing herein contained shall constitute a partnership between the said parties, or affect the right of the patentee to his said letters patent for the said invention in the United States.

In witness, etc.

1. See ante, vol. 2, § 1210.

### 5302. Assignment of copyright of book.

This indenture, made the — day of —, 19—, between — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part: Whereas the said vendor is the author and absolute proprietor of the copyright of a book or work entitled, etc.; and has agreed with the said purchaser for the absolute sale to him of the said copyright free from encumbrances, at the price of — dollars; Now this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of — dollars by

the said purchaser to the said vendor now paid, the receipt whereof is hereby acknowledged, the said vendor hereby assigns, and as absolute owner conveys unto the said purchaser, his executors, administrators and assigns, the unencumbered copyright of and sole privilege of printing all that the said book or work entitled, etc.; and all future impressions of the said work. To have, hold, exercise and enjoy the said copyright and premises unto the said purchaser, his executors, administrators and assigns, henceforth during the residue of the term of the said copyright now unexpired, for his and their own use and benefit, but subject always to such right as may now be subsisting in the publisher or proprietor of the last edition of the said book or work to prevent the publication of any future edition of the same until such last edition shall be out of print.

In witness, etc.

1. As to recording see copyright law of the United States of March 4, 1909 (in effect July 1, 1909), § 44.

2. See ante, form 5295.

### 5303. Assignment of account.

Know all men by these presents that I, — of —, in consideration of — dollars to me paid by — of —, the receipt whereof is hereby acknowledged, do hereby sell, assign and transfer to said — all sums of money now due and becoming due to me from — of —; to have and to hold the same to the said —, with power to collect the same in my name and as my attorney hereunto duly authorized, to his own use.

It is expressly understood, however, that I, the said —, am forever to be kept and saved harmless by the said — from all cost or charge hereafter, in any way or manner, for and from the expense of the collection of the sum and sums hereby sold and assigned.

In witness, etc.

1. See ante, vol. 2, ch. 33.

### 5304. Short form of assignment of account.

In consideration of — dollars, the receipt whereof is hereby acknowledged, I hereby sell, assign, transfer and set over to —

the account for (here state consideration of goods, wares and merchandise) of which the within is a true copy, with all credits thereon, and on which there is justly due from —— of —— the sum of —— dollars.

In witness, etc.

1. See ante, vol. 2, § 1441.

**5305. Assignment of debt with power to sue and usual covenants.**

Indenture made the —— day of ——, 19——, between —— of ——, hereinafter called the assignor, of the one part, and —— of ——, hereinafter called the assignee, of the other part.

Whereas —— of —— is indebted to the said assignor in the sum of —— dollars, for and on account of, etc.; and whereas the said assignor has agreed to assign the said debt to the said assignee for the sum of —— dollars;

Now this indenture witnesseth, that in consideration of the sum of —— dollars, the receipt whereof the said assignor hereby acknowledges, said assignor hereby assigns to the said assignee the said debt of —— dollars now owing to him by the said debtor, and all his right, title and interest both legal and equitable therein.

To have and to hold the same unto the said assignee, his executors, administrators and assigns, as and for his and their own proper demands and effects.

Said assignor hereby irrevocably appoints the said assignee his true and lawful attorney, with full power and authority in the name of the said assignor, his executors or administrators, but at the risk, cost and charge, and for the sole benefit, of the said assignee, his executors, administrators and assigns, to sue for, recover and receive the debt and moneys hereby assigned, and to give good and sufficient releases for the same.

Said assignor hereby for himself, his heirs, executors and administrators, covenants with the said assignee, his executors, administrators and assigns, that the said debt or sum of —— dollars is still due and owing to him from the said debtor; that he has good right to assign the same unto the said assignee as aforesaid; and that said assignor, his executors, administrators or assigns will not, at any time hereafter, receive the said debt or

sum of —— dollars, or any part thereof, nor revoke the power of attorney hereinbefore given, nor do any act whereby the said assignee, his executors, administrators or assigns may be prevented or hindered from enforcing the payment of the same.

Said assignee hereby for himself, his heirs, executors and administrators covenants with the said assignor, his executors, administrators and assigns that he will at all times hereafter well and sufficiently protect, save harmless, and keep indemnified the said assignor, his executors and administrators, of and from all costs and damages that he or they shall at any time pay, sustain or become liable to, for, or on account of any action that may be commenced or prosecuted in his or their names, in pursuance of the power hereinbefore contained, excepting such costs and damages only as shall be caused by his or their neglect or default.

In witness, etc.

**5306. Assignment of debts by creditors to third person in consideration of immediate payment.**

Agreement made between the several persons, companies, and firms whose names and seals are hereunder signed and affixed respectively, being creditors of ——, party hereto of the first part; —— of ——, debtor, of the second part; and —— of ——, purchaser, of the third part.

Whereas the said —— is indebted to the said creditors in the several sums of money set opposite their respective names in the second column of the schedule hereto;

And whereas the said creditors have agreed to assign their said debts to the said purchaser for the consideration hereinafter appearing:

Now these presents witness that, in consideration of the present and immediate payment in cash of —— per cent. of the amounts of the several unsecured claims set opposite their respective names, in the schedule hereto annexed, to the said creditors respectively by the said purchaser, the receipt whereof the said creditors respectively hereby acknowledge, the said creditors hereby assign unto the said purchaser all those debts now due and owing to them respectively from the said debtor, the amount

whereof is set opposite to their respective names in the schedule hereto annexed, and all securities for the same, which securities are to be valued, and the value thereof added to the sums payable by said purchaser for the respective claims: **To hold the same unto the said purchaser absolutely.**

In witness, etc.

**5307. Assignment of subscription to stock.**

Know all men by these presents, that I, in consideration of — dollars, the receipt whereof is hereby acknowledged, and of other good and valuable consideration, have sold, assigned, transferred and set over and do hereby sell, assign, transfer and set over unto —, my right, title and interest as a subscriber to and an incorporator of — company, a corporation organized under the laws of the state of —, to the extent of — shares, and I do hereby request and direct said company to issue the certificates for said — shares to and in the name of said —, or such other person as he may name.

In witness, etc.

**5308. Notice by assignee to debtor of assignment of debt.**

I hereby give you notice that by written agreement, dated —, 19—, between — of —, of the one part, and myself, of the other part, the debt of — dollars owing by you to the said — has been absolutely assigned to me, my executors, administrators and assigns; and you are hereby required to pay to me, or such person as I may appoint to receive the same, the said debt of — dollars on or before the — day of — next, and in default thereof I shall pursue such remedies as are allowed by law for the recovery thereof. Dated —, 19—.

To —.

**5309. Notice to debtor by his creditor of assignment of debt.**

To —: I hereby give you notice that I have this day assigned the debt of — dollars now due from you to me to — of —, and I hereby request you to pay the said sum to him forthwith, and I declare that his receipt for the same shall be a sufficient discharge to you from said debt. Yours, etc.

**5310. Separate assignment of shares of corporate stock.**

Indenture made this — day of —, 19—, between — of —, of the first part, and — of —. of the second part, witnesseth:

That the first party, in consideration of — dollars, the receipt whereof is hereby acknowledged, by these presents does sell, assign, transfer and set over unto the second party, his executors, administrators and assigns, with full power to transfer the same on the books of the corporation, all his right, title and interest in the shares and capital stock and property of the — company, which company has its place of business in — in the county of —, state of —. And the first party further covenants and agrees with the second party, his executors, administrators and assigns, that at the request of him or them, he and his executors, administrators and assigns shall and will at all times hereafter execute any instrument that may be necessary to vest completely in him, or them, all his right, title and interest in the above-described property and stock, and to enable him, or them, to possess, control, enjoy and transfer all the property and choses in action herein assigned or intended to be assigned.

In witness, etc.

1. See ante, vol. 2, § 1433.

**5311. Assignment of corporate stock by indorsement.**

For value received, — hereby sell, assign and transfer unto —, — shares of the capital stock represented by the within certificate and do hereby irrevocably constitute and appoint — to transfer the said stock on the books of the within-named corporation with full power of substitution in the premises. Dated this — day of —, 19—.

\_\_\_\_\_.

In the presence of

\_\_\_\_\_.

**5312. Assignment by corporation.**

Know all men by these presents that the — company of —, incorporated and doing business under the laws of —,

and having a principal office at —, in said state, in pursuance of a resolution of its board of directors, passed on the — day of —, 19—, in consideration of — dollars, the receipt whereof is hereby acknowledged, by these presents does hereby sell, assign, transfer and set over unto — of — all that (here name property assigned) in the hands of (name persons holding the property of company for sale). For a more complete description of the property hereby conveyed reference is made to inventory thereof, dated —, 19—, and contained in inventory book of said company.

In witness whereof, said company has caused these presents to be signed in its name, by its president, and sealed with its corporate seal, attested by its secretary, this — day of —, 19—.

———— Company,

By ———,

President.

Attest:

————,

Secretary.

(Corporate seal.)

1. See ante, vol. 1, § 547.

### 5313. Assignment of life insurance policy.

Indenture made this — day of —, 19—, between — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part. In consideration of — dollars to the said vendor paid by the said purchaser, the receipt whereof is hereby acknowledged, the said vendor, hereby assigns unto the said purchaser, his executors, administrators and assigns all that policy of insurance on the life of said vendor, granted by the — Life Insurance Company of —, numbered —, for the sum of — dollars, and all the moneys assured or to become payable by or under the said policy, and the full benefit thereof, with power to give an effectual discharge for all moneys to become payable thereunder; to have and to hold the same unto the said purchaser, his executors, administrators and assigns. And the said vendor hereby covenants with the said purchaser that said vendor will not do or knowingly suffer anything whereby the said policy may be

rendered void or voidable, or the said purchaser, his administrators, executors or assigns may be prevented from receiving the said sum of — dollars or any part thereof; and that if the said vendor shall do or suffer anything whereby any additional premium or payment shall become payable for keeping the said policy in force, then the said vendor will at all times duly and punctually pay such additional premium, so as to keep the said policy in force.

In witness, etc.

1. See ante, vol. 5, §§ 4362, 4364.

#### **5314. Assignment of life policy—Short form.**

I, —, within named, in consideration of the sum of — dollars to me paid by —, do hereby assign unto the said — the within-written policy of insurance on my life, made by the — Life Insurance Company, dated the — day of —, 19—, and numbered —, for the sum of — dollars.

In witness, etc.

#### **5315. Assignment of policy as security.**

Know all men by these presents that I, — of —, in consideration of \$—, receipt whereof is hereby acknowledged, do hereby assign to — of — Policy No. — of the — Life Insurance Company and all money and other benefits now due or hereafter becoming due thereunder; to have and to hold the same unto said — (assignee) and his assigns forever. This assignment is made to secure said — (assignee) against any loss or damage which he may sustain by reason of (state principal debt), the payment of which by said assignor at maturity will render this assignment void; otherwise it is to be of full force and effect.

1. See also, Pledges and Collateral Security.
2. See also, ante, vol. 5, § 4362.



**5316. Company's consent to assignment of policy.**

Office of the — Life Insurance Co.,  
 —, State of —,  
 —, 19—.

The — Life Insurance Company hereby consents to the assignment of the within policy of insurance by the insured therein named, subject to all the conditions and provisions named in said policy, to — (assignee), but by its consent it assumes and incurs no liability or responsibility as to the regularity or validity of such assignment.

Attest:

\_\_\_\_\_,  
 President.

\_\_\_\_\_,  
 Secretary.

1. See ante, vol. 5, § 4364.

**5317. Assignment of fire policy to mortgagee.**

Loan No. —

Loss or damage, if any, under this policy, shall be payable to the — as first mortgagee, (or trustee) as its interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the within-described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy; Provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Provided also, that the mortgagee (or trustee) shall notify this company of any change in ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

This company reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for ten days after notice to the mortgagee (or trustee) of such cancelation and shall then cease, and this company shall have the right, on like notice, to cancel this agreement.

Whenever this company shall pay the mortgagee (or trustee) any sum for loss or damage under this policy and shall claim that, as to the mortgagor or owner, no liability therefor existed, this company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee (or trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee (or trustee) to recover the full amount of its claim.

Attached to and forming part of Policy No. — of the — Insurance Company of — issued to — at the — Agency. Dated —, 19—.

————, Agent.

(Other insurance permitted.)

**5318. Assignment of contract for sale of realty.**

Know all men by these presents, that I, —, in consideration of — dollars, to me in hand paid, have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over unto —, his executors, administrators and assigns all my right, title and interest in and to a contract for the sale of certain real estate situate in the county of — and state of — and described as follows, to wit: (here describe real estate), which contract was made and executed by — to me, and bears date the — day of —, 19—, to have and to hold the same unto the said —, his heirs, executors, administrators and assigns, subject to the covenants and conditions therein mentioned. And I hereby authorize and empower the said —, upon his performance of the said covenants and con-

ditions, to demand and receive of the said — the deed covenanted to be given in the said contract, in the same manner to all intents and purposes as I myself might or could do, were these presents not executed.

In witness, etc.

**5319. Assignment of shares in building and loan association.**

Know all men by these presents, that I, —, in consideration of a loan made to me by the — building and loan association of —, of — dollars, have agreed to assign and transfer, and do by these presents assign and transfer, unto the said association, its successors and assigns all my right, title and interest in and to — shares of the stock of said association, certificate No. —, issue —, now belonging to me, and standing in my name, as a security collateral to my bond this day given to the said association for the payment of said loan and interest and premium thereon, and the monthly dues on said stock at the times and in the manner therein mentioned. And I hereby authorize said association, in case I should make default in the payment of said loan and interest thereon, or any part thereof, or in the payment of monthly dues, as required by said bond, or any fines, and shall so remain in default for three months, to cancel said shares of stock above described, and apply the withdrawal value thereof at such time upon my said loan, and in the event any surplus remains after the full payment of said loan and interest thereon, premiums, dues and fines, the same shall be paid to my executors, administrators or assigns, and I hereby covenant and agree with said association to continue to pay dues upon said shares of stock until said loan shall be wholly paid.

In witness whereof, I have hereunto set my hand and seal this — day of —, 19—.

---

**5320. Assignment of formula for making medicine.**

Know all men by these presents, that whereas I, — of —, am the inventor and proprietor of a certain method of manufacturing a certain useful and marketable medicine known as —, according to a formula in my possession.

Therefore, in consideration that — of — has this day made and delivered to me his covenant in writing, and under his hand and seal, to pay to me the sum of — dollars in each and every year out of the profits which he, his executors, administrators or assigns may make in the business of preparing and selling said medicine, I have delivered unto said —, a written receipt or formula, containing directions for manufacturing said medicine, and have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto the said — the exclusive right as against me, and my executors, administrators and assigns, to manufacture and sell the said medicine.

And I do for myself, my executors, administrators and assigns, covenant and agree to and with the said —, his executors, administrators and assigns that the said receipt or formula contains full, true and exact directions for making the said medicine; that I have not heretofore, and will not at any time hereafter, without the written consent of him or them, directly or indirectly, disclose the secret of the composition thereof; and that I will not, without the like consent, make or compound for sale, or sell, or become in any way interested in making or compounding for sale, or selling, the said medicine, or any medicine containing the same or similar ingredients, and designed for the like purpose.

In witness, etc.

### 5321. Assignment of dower.

This assignment, made this the — day of —, 19—, by and between —, — and —, of state of —, parties of the first part, and — of —, state of —, parties of the second part, witnesseth:

That whereas — in his life and at the time of his death, was seized of certain real estate in fee simple, of the following description: —, which, because of the decease of the said —, descended to the parties of the first part subject to the dower right therein of the party of the second part:

Now, therefore, the first parties hereby assign and set over unto said second party as her dower right in and to said real

estate the following described real estate: —, to have and to hold the same unto said second party as widow of said —, deceased, for and during her natural life, in full satisfaction of her dower rights in the real estate of said —, deceased, which assignment —, the widow of said deceased, hereby accepts as her full dower right in the real estate of said deceased.

In testimony whereof, etc.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_.

Heirs of Deceased.

\_\_\_\_\_.

Widow of Deceased.

## ASSIGNMENTS FOR THE BENEFIT OF CREDITORS.

### 5325. Commencement clause.

Indenture made the —— day of ——, 19——, between —— of ——, and —— of ——, hereinafter called the debtors, carrying on the trade of —— at ——, under the style or firm of —— & Co., of the first part; —— of —— and —— of ——, hereinafter called trustees, of the second part; and the several persons, firms, and corporations whose names and seals are hereunder signed and affixed respectively, being creditors of the said firm of —— & Co., or of the said —— or —— separately, and all other creditors of the said firm, or of the said —— or ——, acceding hereto, hereinafter called the creditors, of the third part.

1. See title, Composition with Creditors. This is commonly a matter of statute and in such case is, of course, governed by such statute. State statutes covered by the U. S. bankruptcy law are suspended or rendered ineffective as against such law.

### 5326. Declaration of trust.

Said trustee shall stand possessed of the premises hereby conveyed and covenanted to be surrendered, respectively, upon trust, in such manner as he shall think fit to call in, collect, compel payment of, and receive such parts thereof as are outstanding, and to sell and convert into money such parts thereof as do not consist of money; and shall stand possessed of the net proceeds of sale, and of all other moneys which shall come to his hands under or by virtue of these presents upon trust; first, to pay and retain thereout all costs, charges and expenses of, or incidental to, the negotiation, preparation and execution of these presents, and of or to the carrying of the same into effect; second, to pay all claims which are by law entitled to be paid in full in priority to other debts in case of bankruptcy; third, to pay, divide and distribute the residue of the said moneys ratably among the said creditors in discharge of their said debts by such instalments and at such times as the trustees shall think fit, and finally, to pay the surplus, if any, to the said debtor.

**5327. Power of attorney.**

And for the considerations aforesaid the debtor hereby appoints said trustee as his attorney, in his name and on his behalf to execute and sign any deed or document which the said trustee may think necessary or expedient for carrying into effect the trusts and purposes of these presents.

**5328. Verification of debts.**

All creditors, before becoming entitled to receive any dividend, shall (if so required by the trustee) deliver to him a written statement, signed by such creditors respectively, of their debts or claims, and shall likewise verify the same under oath, both as to the consideration and amount of the same; but neither any such verification, nor the execution hereof by any creditor shall be conclusive evidence of the validity or amount of such debt or claim.

**5329. Trustees to allow debts and claims on such evidence as they shall think proper and to compromise at discretion.**

It shall be lawful for the said trustees, and their survivors, or the trustees for the time being, to pay or allow any debts claimed from the said debtor with interest upon any evidence the said trustees or trustee for the time being shall think proper, and to adjust, settle, submit to arbitration, compromise and compound any debts owing by, or any claims or demands upon the said debtor, in such manner and upon such terms as the said trustees or trustee shall think proper.

**5330. Provisos for valuation or abandonment of securities.**

Provided always that any creditor who may have any charge or lien on any estate or effects of the said debtor shall be entitled to receive dividends hereunder on and in respect of the balance only of his debt, after realizing and allowing for or valuing and deducting the value of such last-mentioned charge or lien; and provided also that any creditor neglecting to realize or value such last-mentioned charge or lien prior to receiving dividends hereunder shall be taken to have abandoned such charge or lien.

**5331. Revaluation of securities.**

Provided always, and it is hereby agreed and declared, that it shall be lawful for any creditor, who has so valued his security as aforesaid at any time, to amend such valuation if the original valuation was made bona fide on a mistaken estimate, or if the security has diminished or increased in value since its previous valuation, but so that on any increase in the valuation such creditor shall refund the dividends, if any, received by him on the difference between his original and subsequent valuation, and so that no decrease in the valuation shall disturb dividends already declared and payable to any other creditors.

**5332. Power of trustee in reference to collecting assets.**

It shall be lawful for the said trustee to give time for the payment of any debts owing to said debtor, and to accept payment thereof by instalments, composition or otherwise, and to abandon any debts which said trustee shall consider bad, and also to make such arrangements as he may think expedient with any creditor or other person holding any portion of the trust estate by way of mortgage, pledge or lien, in order to redeem, or discharge or transfer such mortgage, pledge or lien, or to release the equity of redemption thereof, and also, out of the trust moneys, from time to time, to keep down the interest payable in respect of any mortgage or charge upon the trust estate or any part thereof.

**5333. Provision for carrying on debtor's trade.**

Notwithstanding the trusts for sale hereinbefore contained, it shall be lawful for the said trustee in his discretion to carry on in the name of the debtor or otherwise the said business so carried on by him as aforesaid, with a view to the gradual winding up of the same, instead of immediately selling the same; to employ or authorize the employment of the debtor as manager of the said business, and any other persons to assist therein as clerks, servants or otherwise, and to pay out of the trust moneys to the debtor, and to any other person who may be so employed, such salary or wages, or remuneration for services rendered, as the said trustees or trustee shall think fit. It shall be lawful for the said trustee from time to time, at the expense of the trust estate, to procure



by purchase, hire or otherwise, such stock in trade, fixtures, materials, chattels and articles as they or he shall think fit. During such carrying on of the said business the said trustee shall make or cause to be made, in proper books, full and true entries of all moneys received or expended by him in the course thereof, and of all transactions and matters connected therewith, and shall pay all rents, rates, taxes and outgoings (including the expenses of insurance and repairs) payable in respect of the business premises, and all losses, expenses, and sums of money to be incurred or become payable in respect thereof, out of any part of the trust moneys which may be available for the purpose, and shall apply the net moneys which shall be realized by the carrying on of the said business in like manner as is hereinbefore provided in reference to the trust moneys, the trusts whereof are hereinbefore declared.

**5334. Power of trustees to call meeting of creditors.**

The said trustee or trustees may at any time call a meeting of the said creditors by circular letter, stating the time, place and object of the meeting, and sent by post or otherwise to the last known place of abode or business of such creditors respectively, or their respective agents, in time to give such creditors or agents — clear days' notice of such meeting; and any resolution passed at such meeting in reference to any subject mentioned in the circular, by a majority in number representing three-fourths in value of the creditors present or represented at the meeting, shall bind all the said creditors.

**5335. Power of creditors to remove trustees**

A majority in number, representing three-fourths in value of the creditors present or represented at any meeting called for the purpose by one-sixth in value of the said creditors, by such circular letter as aforesaid, may by resolution remove any trustee hereof from office, for any cause which may seem to them sufficient, and may choose a new trustee and appoint a committee to execute at or after such meeting a deed of appointment to such new trustee in substitution for such removed trustee, and the

costs of and incidental to such meeting and appointment shall be paid out of the trust estate.

**5336. Remuneration of trustee and payment to debtor and others.**

Said trustee shall be entitled to employ any person or persons to assist him in winding up the affairs of the debtor, and collecting, realizing and distributing the trust estate hereunder, and to pay out of the trust estate to such person or persons, and also to retain thereout, as a compensation for his own time and services in connection with the trust, such a remuneration as a committee of the creditors shall direct; and to pay thereout to the debtor, either weekly or otherwise, as subsistence money for himself and family, or in consideration of his services in winding up the estate (which services he shall be bound to render as required by the said trustee), such a sum as the said committee shall from time to time direct.

**5337. Covenant by creditors not to sue.**

The said creditors hereby respectively covenant with the debtor that they, the said creditors, respectively will not, so long as these presents shall remain in force, sue, arrest, attach or molest the debtor or his estate for or on account of their respective debts, and that these presents may be pleaded as a defense to any action or other proceeding which may be brought, instituted or taken by or on behalf of any of the said creditors against the debtor or his estate in breach hereof.

**5338. Arbitration clause.**

In case any dispute, doubt or question shall arise between the trustee and any of the said creditors, as to the amount or validity of any debt or claim, or as to any other matter under or incidental hereto, then every such dispute, doubt or question shall be referred to the arbitration of two indifferent persons, one to be appointed by each party, or an umpire to be appointed by the arbitrators in writing before commencing the business of the reference, and the decision or award of such arbitrators or umpire shall be binding upon the said parties.

1. See Forms of Arbitration, ante, 5190.

**5339. Memorandum when instrument is to be held in escrow.**

The within-written indenture is deposited by the within-named debtor with —— (a disinterested third person), who is to deliver it to the within-named trustee if all the creditors of the said debtor whose several debts exceed —— dollars shall have executed or acceded to the same; but in case all such last-mentioned creditors shall not within —— (state time) from the date hereof execute or accede to the same, said —— is to deliver the said indenture to the debtor to be canceled. In the meantime it is to remain in the hands of the said —— for the purpose of obtaining the execution or assent of the said creditors.

## PRECEDENTS.

**5340. Assignment for benefit of creditors with usual provisions.**

Commencement, ante, 5325.

Whereas the said debtor is indebted to the said creditors in the several sums set opposite to their respective names in the first schedule hereunder written; And whereas the said debtor has agreed to make the assignment and enter into the covenants hereinafter contained, and the said creditors have agreed with the said debtor, and mutually each with the others, to accept these presents in satisfaction of their debts, and to execute the release hereinafter contained:

Now this indenture witnesseth that, in pursuance of the said agreements and in consideration of the premises, the said debtor hereby conveys and assigns unto the said trustee, his heirs, executors and administrators, all and singular the real and personal property, credits, and effects of the said debtor to which he is beneficially entitled, whether in possession, reversion, remainder or expectancy, except such parts thereof as are specified in the second schedule hereto; to hold the same unto and to the use of the said trustee, his heirs, executors and administrators, according to the respective nature and tenure thereof, and subject to the mortgages and charges now affecting the same respectively, upon the trusts and subject to the provisions and agreements hereinafter declared concerning the same respectively. And pursuant to said agreements, and in consideration of the premises, the said

debtor hereby appoints the said trustee, or the trustee for the time being of these presents, his attorney for the purposes hereinafter expressed, and hereby ratifies and confirms and covenants with the said trustee that he will, if and when required by him, ratify and confirm whatsoever the said trustee shall do or purport to do by virtue of the said power, and that he will not without the consent of the trustee sell, dispose of, charge, or encumber the said premises hereinbefore subjected to such power, or any part thereof.

Provided always, and it is hereby agreed and declared, that, notwithstanding the said trust for sale hereinbefore contained, it shall be lawful for the trustee to postpone the sale and collection of any part of the said premises for such time as is consistent with reducing the same to money as soon as this can be wisely and prudently done. And in the meantime, and until the said premises respectively shall have been called in, collected, sold and converted into money as aforesaid, it shall be lawful for the trustee at his discretion to manage, employ, repair and insure against damage or loss by fire or otherwise, at the cost of the trust estate, all or any part of the said premises.

And it shall be lawful for the trustee to carry on the business which the said debtor has hitherto carried on, and for such last-mentioned purpose to make such advances out of the premises for the time being, subject to the trusts of these presents, as he shall think fit.

The said creditors shall be entitled to receive dividends hereunder in respect of all debts due to them respectively which would have been provable in bankruptcy, and on the amounts for which they would have been so provable.

In further pursuance of the said agreements, and in consideration of the premises, the said creditors respectively hereby release the said debtor from the said debts, and from all other debts, if any, owing from him to them respectively, in respect whereof they would be entitled to receive dividends hereunder, and from all actions, claims and demands whatsoever (other than their respective rights under these presents) in respect thereof.

Provided always, and it is hereby agreed and declared, that

these presents shall not in any way prejudice or affect the rights or remedies of the said creditors against any surety or sureties, or any person or persons other than the said debtor, nor in any wise prejudice or affect any security which any of the said creditors may have or claim for his debt. But, nevertheless, if such security shall be enforceable against the said debtor or his effects, then in that case such creditor (unless he shall consent to abandon his said security) shall be entitled to receive dividends hereunder upon so much only of the said secured debt as may remain after such security shall have been realized, or after credit shall have been given for the full value thereof.

The power of appointing new trustees shall, for the purposes hereof, be vested in a majority in number of the said creditors, representing in value more than a moiety of the debts ranking for dividend hereunder.

In witness, etc.

(Schedules to be annexed.)

1. See ante, vol. 3, § 2765.

**5341. Assignment by debtor of all his property to three sole creditors.**

1. This indenture, made the — day of —, 19—, between — of —, hereinafter called the debtor, of the one part, and — of —, — of —, and — of —, hereinafter called the creditors, of the other part.

2. Whereas the said debtor, being indebted to the said creditors, in the several sums of money set opposite to their names at the foot hereof and being desirous to discharge the same, said debtor has agreed to assign unto the said creditors the whole of his household furniture, farming stock, and effects, upon and for the trusts, intents, and purposes hereinafter declared:

3. Now this indenture witnesseth that, in pursuance of the said recited agreement, and in consideration of the debts so due and owing from him the said debtor as aforesaid, and for the purpose of discharging the same, and also in consideration of the sum of one dollar paid by the said creditors to the said debtor on the execution hereof, the receipt of which is hereby acknowledged, the said debtor doth hereby assign, set over, ratify, and confirm unto the said creditors all and singular the household furniture,

farming stock, implements and all his other goods, chattels and effects of every kind and description in or about his dwelling-house and premises at —, in the county of —; and all his estate, right, title and interest, both legal and equitable, therein;

4. To have, hold, receive and take all and singular the property hereby assigned unto the said creditors, their executors, administrators and assigns, absolutely, upon and for the trusts, intents and purposes hereinafter declared:

5. Upon trust that they, the said creditors, or the survivors or survivor of them, his executors or administrators, shall, as soon as conveniently may be after the execution hereof and without any further concurrence or assent of said debtor thereto, make sale and absolutely dispose of the said property hereby assigned, by public auction or private contract, in such manner and for such price as they or he shall think proper; and shall give receipts therefor, which shall effectually exonerate the persons taking the same from all responsibility with respect to the application thereof; and shall apply the said purchase-moneys, first, in defraying the costs incurred in preparing and executing these presents, and the expenses of such sale or sales as aforesaid, and all incidental expenses incurred in the execution of the trusts hereof; second, in paying off and discharging the said sums of money so due and owing to said creditors, and set opposite to their respective names at the foot hereof; and third, shall pay over the residue of such purchase-moneys, if any, unto the said debtor, his executors or administrators.

In witness, etc.

#### 5342. Assignment by partners making preferences.

This indenture, made this — day of —, 19—, between — and —, partners under the firm name and style of — of —, of the first part, and — of —, of the second part, witnesseth:

Whereas this partnership is justly indebted in large sums of money, and has become unable to pay and discharge the same with punctuality or in full, and said first parties are desirous of making a fair distribution of all their property and effects among their creditors, now therefore, the said first parties, in consideration of

the premises, and the sum of one dollar, the receipt whereof is hereby acknowledged, do hereby grant, bargain and sell, release, assign, transfer and set over unto the second party, and to his heirs and assigns forever, all and singular, the land, tenements, hereditaments and all the goods, chattels, merchandise, bills, bonds, notes, book accounts, claims, demands, choses in action, judgments, evidences of debt, and property of every name and nature whatsoever of the said first parties, to have and to hold the same and every part thereof, to the said second party, his heirs, executors, administrators and assigns, in trust to and for the following uses, intents and purposes: Said second party shall take possession of all property hereby assigned, and sell and dispose of the same for the best price that he shall be able to obtain, and convert the same into money, and shall collect all said debts, bonds, notes, accounts, claims, demands and choses in action, as may prove collectible, and thereupon execute, acknowledge and deliver all necessary conveyances and instruments for the purposes aforesaid; and by and with the proceeds of such sales and collections, the second party shall, first, pay all the lawful expenses, costs, charges and commissions of executing and carrying into effect this assignment; Second, pay all wages due to the employés of the parties of the first part; Third, pay and discharge in full the debt due to the firm of — of —, for the sum of — dollars; Fourth, pay and discharge the several and respective debts, bills, notes, or sums of money due or to become due from the first parties, together with such interest as may accrue thereon; and if such net proceeds shall not be sufficient to pay the same in full, then such net proceeds shall be distributed pro rata among said persons, according to the amount of their respective claims; Fifth, if there shall be any residue and remainder after the provisions of the above clauses have been carried out, the second party shall pay and discharge all private and individual debts of the first parties due or to become due, in proportion to the amount of money each of said partners has invested in said company; and, if insufficient, then the same shall be applied pro rata to the payment of said debt.

For the better execution hereof, and of the several trusts hereby reposed, the said first parties do hereby make, nominate

and appoint the said second party their true and lawful attorney with full power and authority to do, transact and perform all acts, deeds, matters and things which can or may be necessary in the premises, as fully and completely as the said first parties, or either of them, might or could do were these presents not executed; and attorneys, one or more, under him, to make, nominate and appoint, with full power of substitution and revocation, hereby ratifying and confirming all that said attorney, or his attorneys, shall do or cause to be done in the premises.

The party of the second part hereby accepts the trust created by these presents, and covenants that he will faithfully perform the same.

In witness whereof, etc.

1. See Partnership, post, 6025-6109.

2. See also, Power of Attorney, post, 6145-6178.

### 5343. Assignment of trade debts for benefit of creditors.

(Commencement as in § 5325.)

Whereas the said debtor has for some time past carried on the said trade or business of a —, at — aforesaid, and in the course thereof has become indebted to the said creditors in a considerable amount of money; and whereas, the said debtor being unable to discharge his indebtedness, it has been agreed that the said debtor shall execute this present deed of assignment to the said trustee of all his trade debts for the equal benefit of his said creditors, and that the net proceeds of the collection of such debts shall be accepted by the said creditors in full discharge of their respective claims:

Now this indenture witnesseth that, in pursuance thereof and in consideration of the premises, said debtor hereby assigns unto the said trustee, his executors, administrators and assigns all outstanding debts now due and owing to said debtor, on account or in respect of his said trade or business of a —: To have and to hold the same unto and to the use of the said trustee, his executors, administrators or assigns; upon trust that said trustee, his executors, administrators or assigns shall call in, collect, compel payment of, and receive such outstanding debts; and after payment of the costs of this deed, and deduction of all ex-



penses of realization, to pay and distribute the proceeds among the said creditors according to the amounts of their respective debts. And the said debtor hereby for himself, his executors, administrators and assigns covenants with the said creditors, their executors, administrators and assigns that he will at all times give to the said trustee his best and fullest assistance in or toward realizing the said debts hereby assigned, and in distributing the same among creditors entitled thereto under the trusts hereof; and the said creditors each hereby absolutely release and forever discharge the said debtor, his heirs, executors and administrators, from as well each of their respective debts as also all manner of actions for the same respectively which either of them, or either of their executors, administrators or assigns now, or at any time hereafter may claim, against the said debtor, his heirs, executors or administrators.

In witness whereof the said parties hereto have hereunto set their hands and seals the day and year first before written.

**5344. Assignment for benefit of creditors—Assignee to be governed by statute.**

This indenture, made this — day of —, 19—, between — of —, state of —, party of the first part, and — of —, state of —, of the second part, witnesseth, that the said first party being engaged in business under the name and style of — & Company, and being indebted to divers persons, and unable to pay his debts in full, but desiring to make an equal and fair distribution of his property among his creditors, for and in consideration of the sum of one dollar to him in hand paid, and of the trust herein reposed, has and does hereby grant, bargain, sell, assign and convey all his property, both real and personal, not exempt from execution, and all his rights, whether legal or equitable, to the said second party:

In trust, however, as assignee for the benefit of the creditors of the said first party, to the end that the said —, assignee, shall take immediate possession thereof, and especially take charge of the business heretofore carried on by the said first party and convert the stock and merchandise thereof, and the debts and accounts due and owing to the said first party on account of said

business; into money, by public or private sale, with reasonable diligence and despatch, and due business caution; and shall distribute the same when so converted into money (after setting apart to the said first party all property recovered that may be exempt by statute, and after paying the costs, charges, disbursements and expenses incident to this assignment) among the several creditors in due pro rata proportion, without preference; said assignee to be governed in all respects by the statutes in force in said state for the regulation and enforcement of assignments for the benefit of creditors.

And the said first party doth hereby make, constitute and appoint the said —, assignee, to be his true and lawful attorney, with full power of substitution, to do and perform all acts for the said party of the first part pertaining to the sale and transfer of property, giving deeds and acquittances therefor, and doth hereby empower said assignee to recover all property, or rights or equities in property, which might be reached or recovered by any of the creditors of the said first party. Signed, sealed and delivered the day and year above written.

**ATTORNEY AND CLIENT.****5350. As to particular litigation.**

This agreement made this —— day of ——, 19——, by and between ——, first party, hereinafter called said client, and ——, second party, hereinafter called said attorney, witnesseth:

That said client hereby retains and employs said attorney to represent, appear and act for said client in a certain claim which said client has against —— as follows: (set out nature of claim, as upon an account, or upon a promissory note, or for damages for personal injuries or for defamation), and to prosecute said claim in the —— court of —— county or, with the consent of said client, to adjust, compromise and settle the same. For his services in the premises said client agrees to pay said attorney the sum of —— dollars (or, if upon a contingent fee, a sum equal to —— per cent. of whatever may be collected for said client by suit or otherwise), together with whatever reasonable and necessary expenses said attorney may pay or incur on behalf of said client in the premises. And said attorney hereby accepts said employment and hereby agrees to render such services upon the terms and conditions above set out.

In witness, etc.

1. See ante, vol. 4, ch. 60.

**5351. Employment by year.**

This agreement made by and between —— (private or public corporation) of ——, state of ——, first party, hereinafter referred to as said corporation, and —— of ——, second party, witnesseth:

That said first party hereby retains and employs said second party to act as attorney for and to render all legal advice to said corporation and to represent it in all matters which may be pending in any of the courts of —— (state territory) brought by or against said corporation, during the continuance of this agreement; and to examine all abstracts of title, prepare all contracts,

undertake all collections turned over, and render all and singular all such legal services as said corporation or any of its officers or directors, acting officially, may require.

This contract shall be in full force and effect for the period beginning —, 19—, and ending —, 19—.

For the above services the said corporation hereby agrees to pay said second party the sum of — dollars per annum, payable monthly (or quarterly) at the rate of — per month (or quarter), on the last day of such month (or quarter) together with whatsoever reasonable and necessary expenses said attorney may pay out or incur on behalf of said corporation in the premises. For all services rendered by said second party beyond the afore-said territory, said corporation agrees to pay said second party an additional compensation of — dollars per day for each day (other than Sunday) so engaged, including time necessarily spent in going to and coming from such distant place.

Said second party hereby accepts said employment and hereby agrees to render the services as legal adviser and attorney hereinabove set out on the terms, conditions and agreements herein stated.

In witness, etc.

1. See, generally, as to attorney's employment, ante, vol. 2, §§ 731 et seq.; vol. 4, §§ 2855 et seq.

2. See Power of Attorney, post, 6145-6178.

**AUCTIONS AND AUCTIONEERS.****5355. Memorandum of sale.**

The undersigned hereby acknowledges that at the auction sale held this — day of —, 19—, of the property mentioned in the following schedule, he was declared the purchaser thereof, at the prices respectively named and that he has paid the sum of — dollars by way of deposit, and in part payment of the said purchase-money, to —, auctioneer, and hereby agrees to pay the remainder of the said purchase-money and complete the said purchase within — days hereafter upon delivery to the undersigned of said goods (or upon delivery to him of a proper deed to said real estate).

Witness my hand, etc.

Received of — the sum of — dollars on account of bid of property, above scheduled. Dated —, 19—.

\_\_\_\_\_,  
Auctioneer.

1. See, generally, ante, vol. 1, § 58, and vol. 4, §§ 2870 et seq.

2. See also, Bills of Sale, Agreements to Sell, and Conditional Sales, post, 5395-5446.

**5356. Employment contract.**

I hereby employ — as auctioneer to conduct a sale of the following property: (describing it), upon the terms and at the time and place as follows: (here specify) and for his services I agree to pay him — dollars per day for each day or part of a day, necessarily engaged in making such sale (or — per cent. upon all amounts collected by reason of such sale).

Dated —, 19—.

Signature.

**5357. Agreement of auctioneer after sale.**

I hereby certify that — was the highest bidder for the purchase of — offered by me at public auction, the said bid being for the sum of — dollars; that the said bidder has paid the

sum of —— dollars as part payment of said purchase, and it is hereby agreed that the vendor shall in all respects faithfully perform the conditions of said sale.

Witness my hand this the —— day of ——, 19——.

**5358. Auction contract.**

This agreement, made this —— day of ——, 19——, by and between ——, purchaser, and —— auctioneer, witnesseth:

That said purchaser has this day become the purchaser at public auction of the following described property, situated in ——, to wit: (here describe property).

That said purchaser has this day paid unto said auctioneer —— dollars of the purchase-money for said property.

That said purchaser hereby agrees to pay the remaining sum of —— dollars, purchase-money therefor on the —— day of ——, 19——, or upon the execution of a good and sufficient warranty deed, etc.

That said auctioneer, in consideration thereof, hereby covenants and agrees that the vendor, ——, shall execute and deliver said purchaser a good and sufficient warranty deed for the premises above described, upon the payment of said remaining sum of —— dollars.

In witness whereof, etc.

\_\_\_\_\_  
\_\_\_\_\_.

**BAILMENT CONTRACTS.****5360. General form.**

This is to certify that I, —, of the city of —, —, have this day received from the — company of —, —, one —, all in good condition and for the use of which I agree to pay rent as follows: — dollars cash on delivery of this agreement, the receipt whereof is hereby acknowledged and accepted as payment of the first month's rent only, and then at the rate of — dollars per month payable in advance, on the — day of each month thereafter for — months at the office of the said — company in —, —, without notice or demand. But if default shall be made in any of said payments, or if I shall sell, or offer to sell, or remove, or attempt to remove said — from said city of —, —, without first having obtained the written consent of said — company, then in that case, or if otherwise at the expiration of the time for which said — is rented, I will return and deliver the same to said company in good order save reasonable wear, and said company or its agents may then assume actual possession thereof, and I hereby authorize and empower the said company or its agents to enter the premises wherever the said — may be and take and carry same away, hereby waiving any action for trespass or damages therefor and disclaiming any right of resistance thereto, and I also waive all rights of homestead and other exemptions of said state against this obligation.

Witness my hand this — day of —, 19—.

\_\_\_\_\_.

**5361. Bailment contract for motorcycle.**

This is to certify that I, —, the undersigned, now residing in the city of —, —, have received of the — company of —, —, one —, returnable on demand all in good order and repair and valued at — dollars (\$—), which I agree to use with care and keep in like good order and for the use of which I agree to pay as follows:

On delivery of said property, —— dollars (\$——), which shall be accepted as payment for rent until ——, 19——, and then at the rate of —— dollars (\$——) per month payable in advance on the first day of each and every month at the office of said company in ——, ——, without notice or demand. If default be made in any of the payments, or in case I shall sell, offer to sell, remove, or attempt to remove said property from under my custody or control without having first obtained the written consent of said company, then in that case this lease shall cease and terminate and the said company or its agent is hereby authorized to resume actual possession of said property wherever the same may be and to take and carry the same away and the undersigned hereby waives any action for trespass or damages therefor.

It is further agreed that the undersigned may at any time within said rental period purchase said property by paying the above-named valuation therefor and in that case the rent theretofore paid shall be deducted from such purchase-price. If any instalment of rent is not paid when due or said property is not returned upon demand, undersigned agrees to pay an attorney's fee of —— dollars (\$——) in case this lease is placed in the hands of an attorney for collection of said rent or to recover possession of said property.

Dated ——, 19——, ——, ——.

\_\_\_\_\_.



## BILLS AND NOTES.

## 5365. Promissory note—Short form.

\$——. ——— Jan. 1, 1913.

One year after date I promise to pay to the order of ——,  
—— dollars, with interest at —— per cent. per annum from  
date, for value received.

————— (Signature).

1. See ante, vol. 4, chaps. 84-89.

## 5366. Promissory note payable in bank.

\$——. ——— Jan. 1, 1913.

—— after date —— promise to pay to the order of ——,  
—— dollars, at —— National Bank, Indianapolis, Indiana, for value  
received without any relief whatever from valuation or appraise-  
ment laws with —— per cent. interest from date until paid and  
attorney's fees.

The drawers and indorsers severally waive presentment for  
payment, protest and notice of protest and nonpayment of this  
note.

Dues ——.

—————  
—————

1. See ante, vol. 4, § 3380.

## 5367. Form of check.

The Continental National Bank  
of Indianapolis

Indianapolis, ——, 19——. No. ——

Pay to the order of ——, \$——, —— dollars.

—————

1. For certification, see ante, vol. 2, § 1757; vol. 4, §§ 2889, 2893.

## 5368. Form of bill of exchange.

\$——. Indianapolis, Ind. ——, 19——.

Ten days after date pay to the order of —— —— dollars.  
Value received, and charge same to account of ——.

To ——, ——, state of ——.

1. See ante, vol. 4, § 3366.

—————

**5369. Foreign bill of exchange.**

£100. Indianapolis, Ind., U. S. A., Jan. 2, 1913.

First. Exchange for Liverpool.

Ten days after sight of the First of Exchange (second and third unpaid) pay to the order of Bobbs-Merrill Co., One Hundred Pounds Sterling, value received, and charge to the account of  
JAMES ROBINSON.

To Baring & Sons, Liverpool, Eng.

1. See ante, vol. 4, § 3351.

**5370. Foreign bill of exchange—Another form.**

£100. Indianapolis, Ind., U. S. A., Jan. 2, 1913.

Second. Exchange for Liverpool.

Ten days after sight of this Second of Exchange (first and third unpaid) pay to the order of, etc. (as supra).

**5371. Foreign bill of exchange—Another form.**

£100. Indianapolis, Ind., U. S. A., Jan. 2, 1913.

Third. Exchange for Liverpool.

Ten days after sight of this Third of Exchange (first and second unpaid) pay to the order of, etc. (as supra).

**5372. Forms of signature.**

(1) BY AGENT: James Robinson, by Harold White, Agent.

(2) BY FIRM: Robinson Brothers, by Jas. Robinson.

(3) BY CORPORATION: Indiana Grocery Co., by A. Bruner, Pres.

(4) BY UNINCORPORATED ASSOCIATION: Central Avenue M. E. Church,

By A. B.,

C. D.,

E. F., Trustees.

1. See ante, vol. 4, §§ 2838-2846.

**5373. Forms of indorsement.**

(1) IN BLANK: Harry Wood.

(2) QUALIFIED: Without recourse. HARRY WOOD.

(3) IN FULL: Pay to E. P. Carnes or order. HARRY WOOD.

(4) **CONDITIONAL:** Pay to June Moll on her marriage  
(Signed) E. P. CARNES.

(5) **RESTRICTIVE:** Pay to Indiana National Bank only.  
(Signed) JUNE MOLL WILSON.  
or

For collection only.

(Signed) JUNE MOLL WILSON.

(6) **GUARANTEED:** I hereby guarantee the payment of this note with costs of collection.

(Signed) WOODROW BRYAN.

1. See ante, vol. 4, ch. 87.

#### 5374. Forms of acceptance.

BY INDIVIDUAL DRAWEE:

Accepted Jan. 10, 1913.

(Signed) JOHN BROWN.

BY PARTNERSHIP DRAWEE:

Accepted Jan. 10, 1913.

(Signed) HAMILTON BROS., per JAS. HAMILTON.

BY CORPORATION:

Accepted Jan. 10, 1913.

(Signed) INDIANA HARDWARE Co., per A.  
BRUNER, Pres.

1. See ante, vol. 4, ch. 86.

#### 5375. Corporation bond.

Know all men by these presents that the — company, a corporation duly organized and existing under the laws of the state of —, is held and firmly bound unto —, in the sum of — dollars, goods and lawful money of the United States, to be paid to the said —, his executors, administrators or assigns, or to bearer, for which payment, well and truly to be made, the said corporation and its successors are bound firmly by these presents.

Sealed with the corporate seal of said corporation and dated this — day of —, 19—.

The condition of the above obligation is such that if the said — company, or its successors, shall well and truly pay, or

cause to be paid, unto the said —, his executors, administrators or assigns, or to the bearer hereof, the just and full sum of — dollars, at —, with interest thereon, payable annually at the same place, said principal payable on the — day of —, 19—, then this obligation to be void; otherwise, to be of full force and effect.

In witness whereof, and in pursuance of a resolution of the board of directors of said corporation, duly adopted on the — day of —, 19—, we, the president and secretary, respectively, of said corporation, have hereunto set our hands and affixed the seal of said corporation the day and year first above written.

	_____ Company.
{ Corporate } { Seal }	By _____, President.
	Attest: _____, Secretary.

1. See ante, vol. 1, § 540, and vol. 4, §§ 3580-3588.

### 5376. Indorsement—Guaranty contract.

For value received, — hereby guarantees the payment of both principal and interest of the within note when the same becomes due and payable according to the tenor thereof.

In witness whereof, — has hereunto set — hand and seal this — day of —, 19—.

### 5377. City warrant.

No. —.

\$—.

\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, 19—.

### Treasury Department.

The Treasury will, on or before the — day of —, 19—, pay to the order of —, — dollars, with interest at the rate of — per cent. per annum from the date hereof, out of any funds belonging to the city not before specially appropriated, the same having been this day allowed for street cleaning, and chargeable to general city fund.

\_\_\_\_\_, Mayor.

\_\_\_\_\_, Clerk.

1. Bull v. Sims, 23 N. Y. 570.

**5378. Due bill.**

\$—.

Due —, — dollars, with interest at the rate of six per cent. per annum from date hereof.

Dated at —, this — day of —, 19—.

**5379. Note payable on demand.**

\$—.

—, —, —, 19—.

On demand, for value received, I promise to pay —, or order (or bearer) one hundred dollars with interest at the rate of eight per cent. per annum from date hereof.

**5380. Sight draft.**

\$—.

—, —, —, 19—.

At sight pay to —, or order, one hundred dollars, and charge the same to my account.

To —.

**5381. Note payable by instalments.**

\$—.

—, —, —, 19—.

For value received I promise to pay —, or order (or bearer), — dollars, in manner as follows: — dollars in three months, — dollars in six months, — dollars in nine months, and — dollars in twelve months from date hereof, with interest on the several sums at the rate of — per cent. per annum as they become due.

**5382. Joint and several note.**

\$—.

—, —, —, 19—.

— days after date, for value received, we jointly and severally promise to pay —, or order (or bearer) — dollars with interest at the rate of six per cent. per annum.

**MORTGAGE NOTES AND BONDS.****5383. Common form of mortgage note.**

\$—.

Boston, November —, 19—.

For value received, I promise to pay to —, or order, —

dollars, in — years from this date, with interest to be paid semiannually at the rate of — per centum per annum, during said term, and for such further time as the said principal sum or any part thereof shall remain unpaid.

Secured by mortgage of real estate in —, to be recorded in — registry of deeds.

(Signature.)

**5384. Mortgage note providing for compound interest.**

\$—. Boston, November —, 19—.

For value received, I promise to pay to —, or order, — dollars, — years from this date, with interest until paid at the rate of — per centum per annum, payable semiannually, with interest also until paid, at the rate of — per centum per annum on all instalments of interest not paid when due.

Payable at — bank at —. Secured by mortgage of real estate in —, to be recorded in — registry of deeds.

(Signature.)

1. See ante, vol. 4, § 4683.

**5385. Trust deed note providing for a higher rate of interest after maturity.**

\$—. Chicago, November —, 19—.

— years after date, for value received, I promise to pay to the order of —, — dollars, at — bank at —, with interest thereon at the rate of — per cent. per annum, payable semiannually. This note is secured by a trust deed to —, trustee, of even date herewith, on real estate in —, and is to bear interest at the rate of — per cent. per annum after maturity.

No. —

(Signature.)

**5386. Coupon mortgage note.**

No. —.

\$—.

— years after date, for value received, I promise to pay to the order of —, — dollars at — bank at —, with interest thereon at the rate of — per cent. per annum, payable semiannually, said interest payments being further specified and se-

cured by — coupons of even date herewith, hereto attached. If default be made in the payment of any instalment of interest aforesaid, at the time and place aforesaid, then, and in that event, said principal sum of — dollars shall, at the election of the legal holder hereof, at once become and be due and payable, anything hereinbefore contained to the contrary notwithstanding, said election to be made at any time after the expiration of thirty days without notice. This principal note is one of — notes amounting in the aggregate to — dollars, given for an actual loan of money and secured by a mortgage or trust deed from — of — to — of —, upon property situated in the city of —, in the county of — and state of —, which mortgage deed is duly executed and is to be recorded.

(Signature.)

**5387. Coupon with above note.**

No. —.

\$—.

Due at the — bank, to bearer or holder hereof, on the — day of —, 19—, — dollars, without grace, being for six months' interest upon mortgage note No. —, of even date herewith, for the sum of — dollars, with interest at — per cent. from —, 19—. Maturity.

\_\_\_\_\_.

**5388. Mortgage bond with interest, insurance, tax, water rates, and assessment clauses.**

Know all men by these presents, that I, — of —, in the state of —, am held and firmly bound unto — of —, in the state of —, in the sum of — dollars, to be paid to the said —, or to his certain attorney, executors, administrators or assigns. For which payment well and truly to be made, I bind myself and my heirs, executors or administrators, jointly and severally, firmly by these presents. Sealed this — day of —, 19—.

The condition of this obligation is such, that if the above bounden —, his heirs, executors or administrators, shall and do well and truly pay, or cause to be paid, unto the above-named —, his certain attorney, executors, administrators or assigns,

the sum of —— dollars, in —— years from the date of these presents, with interest thereon, at the rate of —— per cent. per annum, payable semiannually, without fraud or delay, then the preceding obligation to be void; otherwise to remain in full force and virtue.

And the said —— further covenants for himself, his executors, administrators and assigns, that he will, during all the time until all the said moneys secured by these presents shall be fully paid and satisfied, pay and discharge, immediately after they shall be or become due or payable, all taxes, water rents, assessments or charges which may be levied, laid or assessed upon the above-described premises, or any part thereof; and in case of neglect to pay all such taxes, assessments, water rents or charges, or either of them, within —— days after the same shall become due, then the said second party, his executors, administrators or assigns, may pay the same; and the sum so paid, with interest thereon from the time of such payment, the said first party, for himself, his executors, administrators and assigns, covenants to pay to the said second party, his executors, administrators or assigns, on demand, and that the same shall be and be deemed to be secured by these presents, and shall be collectible thereon and thereby in like manner as the said principal sum and interest.

Should any default be made in the payment of any of the said principal and interest, on any day whereon the same is made payable, as above expressed, and should the same remain unpaid for the space of —— days, then and from, after the lapse of the said —— days, the aforesaid principal sum, with all the arrearage of interest thereon, shall, at the option of the said obligee, his executors, administrators or assigns, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary notwithstanding, with the like rights, in the second party, and his executors, administrators and assigns, at his option to elect that the whole principal, interest and all sums secured hereby, shall become due after failure, for like times, to insure or pay taxes, assessments and water rates, or any part thereof.

The said obligor shall keep the buildings erected and to be



erected upon the lands described in the mortgage accompanying this bond insured against loss and damage by fire, by insurers and in an amount of at least — dollars, and assign the policy and certificates thereof to the said obligee, and in default thereof it shall be lawful for the said obligee to effect such insurance, and the premium paid therefor shall be a lien on the said mortgaged premises, added to the amount secured hereby, and payable on demand, with interest at the rate of — per cent. per annum.

**5389. Scire facias bond and warrant.**

Know all men by these presents, that I, — of —, am held and firmly bound unto — of — in the sum of — dollars lawful money of the United States of America, to be paid to the said —, his certain attorney, executors, administrators or assigns, to which payment well and truly to be made I bind myself, my heirs, executors and administrators, firmly by these presents. Sealed with my seal. Dated the — day of —, 19—.

The condition of this obligation is such that if the above-bounden —, his heirs, executors, administrators or any of them, shall and do well and truly pay, or cause to be paid unto the above-named —, his certain attorney, executors, administrators or assigns, the just sum of — dollars, in — years from the date of these presents, with interest thereon, at the rate of — per cent. per annum, payable semiannually, without fraud or delay, then the above obligation to be void, else to be and remain in full force and virtue; provided, however, and it is hereby expressly agreed, that if at any time default shall be made in the payment of any instalment of interest on said sum for the space of — days after such interest shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said —, his executors, administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything herein contained to the contrary thereof notwithstanding.

**5390. Warrant annexed to above bond.**

To —, Esquire, attorney of the Court of Common Pleas at —, in the county of —, in the state of —, or to any other attorney of the said court, or any other court there or elsewhere. Whereas I, — of —, in and by a certain obligation bearing even date herewith, do stand bound unto — of — in the sum of — dollars lawful money of the United States of America, conditioned for the payment of the just sum of — dollars, in — years from the date thereof, with interest thereon at the rate of — per cent. per annum, payable semiannually: provided, however, and it is thereby expressly agreed, that if at any time default shall be made in the payment of any instalment of interest on said sum for the space of — days after such interest shall fall due, then and in such case the whole principal debt aforesaid shall, at the option of the said —, his executors, administrators or assigns, become due and payable immediately, and payment of said principal and all interest thereon may be enforced and recovered at once, anything therein contained to the contrary thereof notwithstanding. These are to desire and authorize you, or any of you, to appear for me or my heirs, executors or administrators, in the said court or elsewhere, in an action of debt, there or elsewhere brought, or to be brought, against me or my heirs, executors or administrators at the suit of the said —, his executors, administrators or assigns, on the said obligation, as of any term or time past, present or any other subsequent term or time there or elsewhere to be held, and confess judgment thereupon against me or my heirs, executors or administrators, for the sum of — dollars lawful money of the United States of America, debt, besides cost of suit, by non sum informatus, nihil dicit, or otherwise, as to you shall seem meet; and for your, or any of your so doing, this shall be your sufficient warrant. And I do hereby for myself, my heirs, executors and administrators remise, release and forever quitclaim unto the said —, his certain attorney, executors, administrators or assigns, all and all manner of error and errors, misprisions, misentries, defects and imperfections whatever, in the entering of said judgment, or any process or proceedings thereon or thereto, or anywise touching or concerning the same.

In witness whereof, I have hereunto set my hand and seal this  
 — day of —, in the year 19—.

### 5391. Judgment note.

Same as promissory note, short form, with this addendum:

Know all men by these presents that whereas the undersigned is (or are) justly indebted to said — (payee) upon the foregoing note in the principal sum of \$—, with interest thereon, now therefore in consideration of the premises and of one dollar to the undersigned in hand paid by said — (creditor), the receipt whereof is hereby acknowledged, I (or we) do hereby make, constitute and appoint —, or any attorney of any court of record, to be — true and lawful attorney, irrevocably, for and in the name, place and stead of the undersigned, to appear in any court having jurisdiction, at any time after maturity of said note, to waive the issuance and service of process, and confess judgment in favor of said (creditor), — legal representatives, assigns or other legal holder of said note, for said sum or so much thereof as may remain due and owing, with interest thereon, and costs, and \$— attorney's fee, and to file a cognovit for said aggregate sum, with an agreement to the effect that no appeal therefrom shall be taken, that no equitable action to restrain its collection shall be taken, that all errors intervening shall be released, that an execution may issue thereon and be levied forthwith and that all rights to have personal property last taken and levied upon to satisfy the same shall be waived and relinquished, and hereby ratifying and confirming all that said attorney may do by virtue hereof.

Witness, — hand and seal, — this — day of —, 19—. (Seal)

1. See Power of Attorney, post, 6169.

### 5392. Certificate of deposit.

Security Trust Company.

\$1,000. No. —.

Certificate of Deposit, Not Subject to Check.

Indianapolis, Ind., Jan. 1, 1913.

American Central Law School has deposited with this company

one thousand dollars, payable to the order of same, in current funds on the return of this certificate properly indorsed, six months after date, with interest at 4 per cent. per annum for the time specified only. Interest at 3 per cent. per annum on demand.

Countersigned,

\_\_\_\_\_ ,

President.

\_\_\_\_\_ ,

Secretary or Cashier.

1. See ante, vol. 4, §§ 3356, 3360.

### 5393. Notice of protest.

\_\_\_\_\_ (Place and date)

To \_\_\_\_\_ ,

(at) \_\_\_\_\_ .

Take notice that a — (here state whether check, draft, etc.) dated the — day of —, 19—, for \$—, drawn by — on — payable to the order of — at —, endorsed by you, was this day at the request of — protested for nonpayment, (or nonacceptance) the same having been presented and payment (or acceptance) demanded, which was refused. The holder thereof looks to you for payment.

(Seal.)

\_\_\_\_\_ ,

Notary public in and for

— county, state of —.

1. See ante, vol. 4, §§ 3477-3482.

2. See post, 6183.

## BILLS OF SALE, AGREEMENTS TO SELL, AND CONDITIONAL SALES.

### 5395. Bill of sale of chattels in usual form.

Know all men by these presents that I, — of —, county of —, state of —, in consideration of — dollars to me paid by — of said —, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said — the following goods and chattels, namely, etc.

To have and to hold all and singular the said goods and chattels to the said — and his executors, administrators and assigns, to their own use and behoof forever.

And I hereby covenant with the grantee that I am the lawful owner of the said goods and chattels; that they are free from all encumbrances; that I have good right to sell the same as aforesaid; and that I will warrant and defend the same against the lawful claims and demands of all persons. In witness whereof, I hereunto set my hand and seal this — day of —, 19—. (Signature.)

1. These are sometimes prescribed by statute. Cf. Maryland Pub. Gen. Stat., art. 21, § 60.

2. See also, ante, vol. 5, chaps. 154, 155.

### 5396. Bill of sale of goods by indenture.

This indenture, made the — day of —, 19—, between — of —, of the first part, and — of —, of the second part, witnesseth:

That in consideration of — dollars paid by the said first party to the said second party, the receipt whereof is hereby acknowledged, said first party doth by these presents bargain, sell, and assign unto the said second party all the goods, chattels and effects in and about his dwelling-house, situate and being numbered — on — street, in said —, which are mentioned and specified in schedule hereunder written. To have and to hold the said goods, chattels and effects unto the said second party, his executors, administrators and assigns, absolutely to

his and their own use forever. And the said first party hereby covenants with the said second party that he is the lawful owner of the said goods, chattels and effects; that they are free from all encumbrances; that he has good right to sell the same as aforesaid; and that he will warrant and defend the same against the lawful claims and demands of all persons.

In witness, etc.

**5397. Receipt of delivery of possession to be indorsed on above indenture.**

Be it remembered that on the — day of —, 19—, the within-named first party delivered to me, the within-named second party, the goods, chattels and effects within mentioned or referred to, a — being delivered by him and received by me in the name of the whole.

In presence of —.

**5398. Bill of sale with special warranty.**

Know all men by these presents that I, — of —, county of —, state of —, in consideration of — dollars, to me paid by — of —, the receipt whereof is hereby acknowledged, do hereby grant, sell, transfer and deliver unto the said — three Guernsey cows described as follows:

And I do hereby warrant them to be sound in every respect, free from disease and to be full-blooded Guernsey stock; and I covenant and agree, to and with said —, to warrant and defend the said cattle hereby sold to said —, his executors, administrators and assigns, against every person whomsoever.

In witness whereof, etc.

**5399. Bill of sale of registered vessel.**

To all to whom these presents shall come, greeting. Know ye, that I, — of —, in the state of —, sole owner of the bark or vessel called the — of —, of the burden of — tons or thereabout, for and in consideration of the sum of — dollars, lawful money of the United States of America, to me in hand paid before the sealing and delivery of these presents, by — of —, in the state of —, the receipt whereof I do

hereby acknowledge and am therewith fully satisfied, contented and paid, have and do hereby bargain and sell, unto the said —, his executors, administrators and assigns, all of the said bark or vessel, together with all the masts, bowsprit, sails, boats, anchors, cables, tackle, furniture and all other necessities thereto appertaining and belonging; the certificate of the registry of which said bark or vessel is as follows, namely: (insert the registry at length).

To have and to hold the said bark and appurtenances thereunto belonging unto him, the said —, his executors, administrators and assigns, to the sole and only proper use, benefit and behoof of him the said —, his executors, administrators and assigns forever; and I, the said —, have and hereby do promise, covenant and agree, for myself, my heirs, executors and administrators to and with the said —, his heirs, executors, administrators and assigns, to warrant and defend the said bark — and all the other before-mentioned appurtenances against all persons whomsoever.

In testimony whereof, I, the said —, have hereunto set my hand and seal this — day of —, 19—. Signed, sealed, and delivered in presence of —. (To be acknowledged.)

1. A bill of sale of an enrolled or licensed vessel is the same in form, except that a copy of the enrolment or license is inserted instead of a copy of the register.

## AGREEMENTS TO SELL PERSONALTY.

### 5400. Agreement for sale of a secret process of manufacture.

Indenture made the — day of —, 19—, between — of —, the vendor, and — of —, the purchaser.

Whereas the vendor is the inventor of a secret process for the manufacture of — (state what), and the purchaser has agreed with him for the sale of such process and the exclusive use thereof for the sum of — dollars.

Now this indenture witnesseth as follows:

In pursuance of said agreement and the payment of said sum by the purchaser to the vendor, the latter covenants with the purchaser:

(1) To impart the said process to the purchaser and to give

him such instructions in regard to the same as may be necessary for using the same effectually.

(2) Not at any time to disclose the said secret process and at the request and cost of the purchaser to take all possible steps to prevent said process being used by any other person.

(3) To pay to the purchaser for every breach of the foregoing covenant the sum of — dollars as liquidated damages.

The vendor hereby warrants to the purchaser that he has not at any time disclosed the said secret to any person or done anything whereby the said secret has or is likely to become known to the public.

In witness, etc.

(Signature of vendor.)

**5401. Agreement for purchase of sole right of compounding and selling a patent medicine for a term of years for a share of profits.**

Agreement made this — day of —, 19—, between — of —, the proprietor, and — of —, the purchaser, witnesseth as follows:

1. The proprietor, for the considerations hereinafter mentioned, hereby grants and assigns unto the purchaser all and singular the right and interest of him, the proprietor, of and in certain medicines or preparations called respectively —, whereof he is sole owner.

2. The proprietor shall, in a certain writing under his own hand, of even date herewith, set forth full, true and perfect recipes for the making up or compounding the aforesaid medicines or preparations respectively.

3. The proprietor shall not at any time hereafter disclose or make known to any person whomsoever the said recipes, whereby any of the said medicines or preparations, may be compounded or made up.

4. The proprietor shall not at any time hereafter, either by himself or by an agent, or otherwise, make up or compound the aforesaid medicines or preparations, or any other of the same description, or permit or allow any of them to be made up or compounded by any person whomsoever, under or by virtue of



any license or authority by him to the proprietor heretofore or to be hereafter given or granted.

5. In consideration of the aforesaid articles the purchaser shall pay to the proprietor annually one moiety of the net profits arising from the sale thereof during the term of — years, after which term the purchaser shall be entitled to hold the proprietorship of the said medicines and preparations without account.

6. The purchaser shall, during the said term of — years, render to the proprietor annually, on the — day of —, a statement and account of the sale of the said aforesaid medicines or preparations, together with the cost of preparing and advertising the same, whereby the net profits arising from the sale thereof may be ascertained.

7. The expense of advertising the said medicines or preparations during the said term shall not be greater or otherwise than the sum to be agreed on between the purchaser and the proprietor by written memorandum.

8. Within — days after rendering the account mentioned in the sixth article, the purchaser shall pay to the proprietor the share or proportion of the net profits due to him on the said account.

9. The proprietor shall be entitled to call upon the purchaser to produce books, in order to verify or prove the accounts to be rendered by him in pursuance of the sixth article.

In witness, etc.

#### 5402. Agreement for sale of furniture and fixtures of a hotel.

Agreement made this — day of —, 19—, between — of —, the vendor, and — of —, the purchaser, witnesseth:

1. The said vendor agrees to sell to the said purchaser, who agrees to purchase at the valuation and upon the terms hereinafter mentioned, all the stock, implements and utensils in trade, household furniture, fixtures, fittings and effects specified in the schedule hereunder written, now being in, upon and about the hotel called "The — Hotel," its cellars, stores, stabling,

outbuildings, yards and premises, which now are in occupation of the said vendor, situate at, etc.

2. The said valuation shall be made on or before the — day of — next, up to which time all outgoing in respect of said hotel and business shall be defrayed by the said vendor, when the amount of such valuation shall be paid to the said vendor, who shall thereupon deliver up to the said purchaser, or his agent, the full and peaceable possession of the said hotel and premises, and also of the said stock in trade, furniture, fixtures, fittings and effects.

3. The said valuation shall be made by two persons, one to be chosen by each party, or by an umpire to be chosen by such appraiser before entering upon such valuation; and that in case either party shall neglect or fail to make such appointment within — days from the date hereof, or if either of such valuers or the umpire shall refuse or neglect to proceed and complete such appraisal within — days, inclusive, next after their appointment, the appraiser of the other of them shall proceed alone therein, and his valuation shall then be binding and conclusive upon both the said parties.

4. In case the said purchaser shall refuse or neglect to pay the amount of such valuation on the said — day of — next, or if the said vendor shall, upon an offer in writing, of the said purchase-money, deliver to or left for him at the said hotel, refuse or neglect to deliver up possession thereof, and of all the said outbuildings and premises, and of the said stock in trade, furniture, fixtures, fittings and effects, or to deliver over and transfer the licenses relating to the said hotel and premises and the business thereof, then, and in either of such cases, the defaulting party shall forfeit and pay to the other of them — dollars as and for liquidated damages between them; and then these presents shall become void.

In witness, etc.

1. See ante, vol. 5, §§ 4980, 4981.

#### **5403. Agreement for sale of physician's practice.**

Agreement made this — day of —, 19—, between — of —, the vendor, and — of —, the purchaser, witnesseth:

Whereas the said vendor has for many years past exercised his profession of physician and surgeon at —, county of —, and is now desirous of retiring from his practice at — afore-said, and the said purchaser is desirous of establishing himself as a physician and surgeon at said —, now, therefore, the said vendor agrees to sell to the said purchaser, who agrees to purchase the said practice and the good will and benefits thereof from the — day of — next, together with all the fixtures, furniture, medical books, surgical and other instruments and apparatus, and all the drugs, medicines, bottles and other things now used therein, for — dollars; in confirmation whereof the purchaser, upon the execution hereof, has paid — dollars by way of deposit and in part of the purchase-money.

The said vendor further agrees that, on the payment of the residue thereof as hereinafter mentioned, he will fully and absolutely deliver over and assign to the said purchaser, his executors, administrators or assigns, the said practice or business, and the good will thereof, for his and their own absolute use and benefit; and likewise the full and uninterrupted possession of the office in which the said practice is now carried on by him, together with the fixtures, furniture, books, instruments, apparatus and things now used in and relating to the said practice; and will introduce and recommend the said purchaser to his patients, friends and others, as his successor; and will use his best endeavors to promote and increase the prosperity of the said practice or business; and will not reside or practice either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practicing either at — aforesaid, or elsewhere, within — miles thereof.

The said purchaser, in consideration of the agreements on the part of the vendor hereinbefore contained, hereby further agrees to pay him, his executors or administrators the residue of the purchase-money, viz.: — dollars, by instalments as follows: one-half part thereof on the — day of — next, upon receiving the full and peaceable possession of the said practice, office, good will, fixtures, furniture, books and things hereinbefore men-

tioned, and the remaining half part thereof on the —— day of —— next.

In witness, etc.

#### 5404. Contract to grow and sell sugar beets.

This agreement made and entered into this —— day of ——, 19——, by and between ——, party of the first part, and —— Sugar Company, party of the second part, witnesseth:

That in consideration of the covenants and agreements hereinafter contained, said first party does hereby agree to plant in sugar beets —— acres of land each year for and during a period of —— years successively from and after date hereof; first party further agrees to plant, grow, harvest and deliver beets from said acreage for said time under the instructions and under the general supervision of second party or its agents. Said first party further agrees to employ only laborers experienced in bunching, thinning or hoeing sugar beets.

That in consideration of the above covenants and agreement on the part of the first party said second party hereby agrees to pay first party for each and every ton of sugar beets grown and raised on said acreage when delivered to second party's factory at ——, the sum of —— dollars per ton.

It is further understood and agreed by and between the parties hereto that first party is to pay the entire expense of planting, cultivating, harvesting and delivering said beets.

In witness whereof, said parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

#### 5405. Contract to grow and sell sugar beets—Another form.

This agreement made this —— day of ——, 19——, by and between —— (hereinafter called the grower), and the —— company (hereinafter called the company).

Witnesseth, that the said parties each in consideration of the promises and agreements of the other, agreed as follows: The grower, during the year commencing with the spring of 19—— is, in compliance with the terms hereof, to plant, cultivate and har-

vest in a good and husbandlike manner for the company, — to — acres of —, on the following described lands, to wit: In section —, township of — north, range — in county of —, state of —.

The — shall be raised from seed furnished by the company. At least — pounds of seed per acre shall be planted. Seed shall be paid for by the grower to the company at the rate of — cents per pound, and payment therefor deducted from the first payment of — delivered. The title to said seed and to said crop of — from the time when the same begins to grow shall be and remain in the company.

All directions given by the company as to the seeding, cultivating, harvesting, care and delivering of — shall be carefully followed and delivered by the grower. The company shall unload — delivered in car-load lots without cost to the grower.

The company shall pay for — delivered at the rate of — dollars and — cents per ton for — testing — per cent. of — and — and — cents per ton more for each — per cent. of increase above — per cent., and — and — cents per ton less for each — per cent. of decrease below — per cent. The company will not be liable to receive or pay for — containing less than — per cent. of sugar, or for — which are rotten or otherwise unfit or undesirable for making sugar. An additional price of — cents per ton will be paid by the company for — delivered after —.

In case the company's factory shall be destroyed by fire or otherwise or from any cause so injured as to be incapacitated for work all — not delivered shall be properly cared for by the grower and delivered as and where ordered by the company, and in that case any extra necessary expense of delivery shall be borne by the company.

No agent of the company has any authority to change or alter the terms or conditions of this contract.

It is hereby provided that in case said land is used for the production of —, said — shall be delivered to the — company and an order shall be given to the party of the first part on said company for the proceeds to the amount of \$ — the

second year, and \$—— the third year on or before —— of each year.

And for the purpose of securing the payment of the said rent above reserved and taxes, the said party of the second part hereby covenants and agrees that the said party of the first part, —— heirs, executors and assigns shall have a lien in the nature and to the effect of a chattel mortgage upon all the produce of the said tillable land, whether harvested or not, and the said party of the second part hereby covenants and agrees to sell and mortgage to the said party of the first part, —— heirs, executors, administrators and assigns, the said produce and in case said party of the second part shall fail or neglect to pay the same as above covenanted and agreed, the said party of the first part, —— heirs, executors, administrators and assigns shall have the right and power to take the possession of the said produce wherever it may be found, and sell the same at private sale or public auction at the best prices —— can obtain therefor, after giving at least ten days' previous notice of the time and place of said sale by posting a written or printed notice thereof in three or more public places in said township of said county, and out of the money to arise from such sale thereof, if sufficient, there shall be retained and paid the amount of said rent and taxes due, together with any and all costs and charges of such sale, and shall pay the surplus moneys, if any, to said party of the second part.

1. *Lingle v. Owosso Sugar Co.*, 139 Mich. 204, 102 N. W. 639.

**5406. Beet sugar contract—Planting and sale of beets.**

This agreement made and entered into this —— day of ——, 19——, by and between —— of ——, party of the first part, and —— of ——, party of the second part, witnesseth:

The said first party agrees to plant the seed furnished by said second party; that he will sow fifteen pounds to the acre; that he will plant, cultivate and harvest the beets raised by him under this contract, as he shall be from time to time directed by said second party, during the month of December or later. Beets to be delivered after the first of November must be pitted by first

party. In harvesting said beets said first party will cut off the tops clean and square at the base thereof, so that no part of the stem, where leaves are grown, shall be left thereon. All seed furnished for planting beets under this contract shall be paid for at the rate of fifteen cents per pound at — and the amount for the same and any advances made by said second party to said first party shall be deducted from the first payment due for beets. In delivering beets, said first party will exercise due care to prevent stones, dirt or other refuse to become mixed with the beets delivered either in wagons or cars.

It is mutually agreed that the title to said crop of beets to be grown from seed furnished by said second party, and on the lands above described, shall vest in second party as soon as the crop begins to grow; but the amount to be paid to said first party shall be based solely upon the quantity of beets actually delivered in accordance with the terms of this contract. This provision is inserted in this contract for the express purpose of preventing any other person, persons, or companies from acquiring any interest in the title or titles to the possession of said beets.

It is further agreed that beets purchased under this contract shall be delivered to said second party's beet sheds in —, and shall be paid for as follows: Beets testing 12 per cent. October delivery, \$— per ton; November delivery, \$— per ton; December or later deliveries, \$— per ton, and — cents per ton for each 1 per cent. more or less, for beets containing a greater or less amount of sugar. Payable on the fifteenth day of the month for beets delivered the previous month.

In case second party's factory shall be destroyed by fire, or otherwise injured to prevent receiving beets, in such an event all beets not delivered shall be properly cared for by first party and delivered as ordered by second party; such extra necessary expense of pitting and delivery to be borne by second party.

No additions or alterations made by agents will be binding upon the second party.

In witness whereof, the parties hereunto have set their hand and seal the day and year first above written.

In presence of

\_\_\_\_\_

\_\_\_\_\_, Farmer.

\_\_\_\_\_, Company.

**5407. Agreement for the sale of ship or vessel.**

Agreement made this — day of —, between — of —, merchant, the lawful owner of the sailing ship or vessel called "The —," hereinafter described, vendor, of the one part, and — of — and — of —, merchants and copartners, trading under the firm of — & Co., purchasers, of the other part.

The said vendor hereby agrees to sell to the said purchasers, who hereby agree to purchase, at the sum of — dollars, free from all charges and encumbrances, all that said ship or vessel called "The —," whereof — is master, now lying in the port of —, a full description whereof is contained in the copy of the certificate of her registry hereto annexed, together with all her tackle, apparel, utensils and appurtenances whatsoever to the said ship or vessel belonging, or in any wise appertaining; which said ship or vessel has been duly registered pursuant to an act of congress for that purpose at — aforesaid, as appears by the said register.

And it is further mutually agreed that the said purchase shall be completed on the — day of — next, at — o'clock in the —noon, when the said purchase-money shall be paid; and on payment thereof possession of the said ship or vessel shall be duly given, and a bill of sale thereof to the said purchaser duly executed and registered according to law.

In witness, etc.

1. See Bill of Sale of Vessel, § 5399.

**5408. Contract to buy output of mill.**

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That said first party hereby agrees to take from second party the mill cut from the mill owned and operated by second party located on — Creek, — county, state of —. Said first party agrees to pay said second party the sum of — dollars per thousand feet mill run for all merchantable lumber to run No. 2 and better, with the usual rule of measuring two inches only to be counted with one-eighth off, to cut lumber



from ten to twenty feet, to cut one and two inches, and to cut as requested by the party of the first part.

It is further understood and agreed that said price of — dollars per thousand feet is to be the price for all merchantable lumber cut and properly stacked on said mill yard, and said second party further agrees to properly stack each length and width of lumber separately and to stack the same not less than two hundred feet from said mill. First party agrees to check the lumber once each month and pay for it on the yard at the time of checking; all lumber that will not grade No. 2 is to be charged back to the party of the second part. It is further agreed and understood between the parties hereto that all the lumber now on the yard is to come in under the provisions of this contract.

In witness whereof, first and second parties have hereunto set their hands and seal this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

**5409. Indorsement that above agreement shall apply to further purchases.**

I hereby agree and direct that the goods and chattels hired and received by me of — & Co. this day shall be added to and put on the lease of goods hired by me of them previously, and upon the same terms and conditions, except and with the further agreement that the money paid this day is exclusively for and on account of the goods hired this day, and that hereafter I will pay to said — & Co. the sum of — dollars per — for the use of all said goods and chattels, and that none of them, whether named in the original lease or afterward added, is to be or become my property until the full amount or price for each and all the same is paid.

In witness, etc.

**5410. Hire-purchase agreement of carriage.**

Agreement made this — day of — between — of —, the owner, and — of —, the hirer, witnesseth: The owner will let and the hirer will take a (victoria) for the term of —,

subject to termination as hereinafter provided, at the monthly rent of —— dollars, payable on the —— day of every month, the first payment to be made on the —— day of —— next. The hirer agrees during the hiring to punctually pay said rent; to keep said carriage in good repair, and to pay all damage to the same by accident, fire or otherwise; to pay taxes for or in respect of the same, and not to part with the custody of the carriage. If the hirer shall make default in payment as provided, or shall be adjudged a bankrupt, or shall have any execution levied on his goods, or suffer any act which may prejudice the owner's rights, or fail to observe the stipulations herein contained, the owner may resume possession of the carriage, and for that purpose may enter the premises occupied by the hirer. The hirer may at any time terminate the hiring by returning the carriage to the owner. If the hiring shall continue for the period of —— and the hirer shall desire to purchase the carriage, the owner will sell the same to him for the sum of —— dollars in addition to the aforesaid monthly payments, and will transfer the property in the carriage, but until such payment the same shall remain the exclusive property of the owner.

In witness, etc.

#### **5411. Agreement for sale of patent.**

This agreement, made, etc., between the vendor and purchaser, witnesseth, that whereas the said (vendor) obtained letters patent of the United States, dated the —— day of ——, 19—, and numbered ——, for an invention —— (state briefly the invention), he hereby agrees to sell absolutely to the said (purchaser), who hereby agrees to purchase, at the sum of —— dollars, all that said invention, patent, patent right and all interest whatsoever of him the said (vendor) of, in and to the said invention and patent; together with all royalties, powers and privileges whatsoever thereto belonging, or in any wise incident or appertaining; and in confirmation of such sale, the said (purchaser) has, upon the execution hereof, paid the said sum of —— dollars by way of deposit on and in part of the said purchase-money;

And the said (vendor) further agrees that he will, at any

time hereafter, on payment of the remainder of the said purchase-money, and at the request of the said (purchaser), execute an effectual transfer of the said invention, patent, patent right, interest and premises unto the said (purchaser), or to such persons or person as he shall direct;

And the said (purchaser) further agrees to pay the said purchase-money to the said (vendor) on the — day of — next, on having a valid and effectual transfer thereof, which is to be prepared by and perfected at the expense of the said vendor;

And also that, for the due performance of this contract, each party binds himself unto the other of them in the penal sum of — dollars, which shall be recoverable as liquidated damages between them under or by virtue hereof.

In witness whereof, the said parties have hereto set their hands the day and year first above written.

1. See ante, vol. 1, § 254; vol. 2, §§ 839, 1210; vol. 3, §§ 1900, 2319; vol. 4, § 3400; vol. 5, § 4985.

2. See Assignments, ante, 5296-5301.

**5412. Preliminary agreement for sale of patent to trustee for company about to be formed in consideration of shares or cash.**

Agreement made the — day of —, 19—, between — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the trustee, as trustee for and on behalf of the company intended to be formed as hereinafter mentioned, of the other part.

Whereas the vendor is the owner of the patent hereinafter mentioned; and whereas a corporation is intended to be formed under the laws of the state of — for the purpose, among other things, of acquiring the said patent, and manufacturing articles under said patent; and whereas it is proposed that the nominal capital of the said company shall be — dollars, divided into — shares of the value of — dollars each: Now these presents witness, and it is hereby agreed, as follows:

The vendor shall sell, and the company shall purchase at the price of — dollars, all that patent of the United States dated the — day of —, 19—, and numbered —, for an improve-

ment in —, and all improvements and variations of the same which have been or which may hereafter be made, and the full benefit and advantage of any invention or improvement relating to the said business not covered by said patent.

The consideration for the said sale shall be payable as follows, that is to say: the company shall, immediately on its incorporation, issue to the vendor — shares in the said company, of the nominal value of — dollars each, and credited in the books of the company as fully paid-up shares; and the issue of such shares shall be accepted by the vendor as payment of the purchase-money to the extent of — dollars; and the residue of the purchase-money shall, immediately upon the incorporation of the company, be paid in cash to the vendor; and if the said residue, or any part thereof, shall remain unpaid after the incorporation of the company, then the company shall pay to the vendor interest thereon, at the rate of — per cent. per annum, from the date of incorporation until actual payment.

Upon the allotment of shares to the said vendor as aforesaid, the vendor shall execute such an assignment of said patent as may be reasonably required for effectually vesting the same in the company; and shall also enter into a covenant to assign to the company the benefit of any future invention of a like kind connected with the process of the manufacture of —, or any process of a similar description, or with a similar object.

The vendor will act as the manager of the company for a period of — years from the incorporation thereof, if he shall so long live, determinable nevertheless by the company if the vendor shall not properly discharge his duties as manager, and will as such manager discharge such duties as the directors of the company shall from time to time assign to that office; and the vendor shall receive for his services as manager such salary as the directors shall from time to time determine.

Upon the adoption of this agreement by the company, the trustee shall cease to be in any way personally liable in respect of these presents, or of anything done or attempted to be done in pursuance hereof.

In case, before the — day of —, 19—, the company shall

not have been incorporated, or this agreement shall not have been adopted and confirmed, or at least — shares in the capital of the company shall not have been taken up, these presents shall be void.

In witness, etc.

1. See Assignments, ante, 5296-5301.

**5413. Agreement for forming syndicate to purchase contract for sale of patent and to sell contract or patent to company or otherwise.**

Agreement made this — day of —, 19—, between — of —, the purchaser, of the one part, and the several persons whose signatures and addresses are given in the schedule hereto annexed, the subscribers, parties of the second part.

Whereas — of — has obtained letters patent of the United States for an improvement in the manufacture of —, which letters patent are numbered —, and bear date the — day of —, 19—, and the said inventor is the sole owner thereof; and whereas by a contract in writing dated the — day of —, 19—, and made between the said inventor of the one part, and the said purchaser of the other part, the said inventor hath agreed with the said purchaser for the sale to him, at the price of — dollars, of the said patent, together with the benefit of improvements or additions thereto, and any discovery relating to the manufacture of — made or acquired by the said inventor as therein mentioned; and whereas on the execution of the said contract the said purchaser paid the said inventor the sum of — dollars, part of said price; and whereas the several persons, second parties hereto, have agreed to unite in purchasing the benefit of the said contract, and to form themselves into a syndicate for that purpose: Now it is hereby agreed and declared as follows:

A syndicate is hereby established between the several persons parties hereto for the purpose of acquiring the benefit of the said contract.

The capital of the syndicate shall be of the sum of — dollars, which shall be considered as divided into — shares of — dollars each, and shall be subscribed for by the respective

subscribers in the number of shares mentioned opposite their respective signatures in the schedule hereto.

The said purchaser and — of — shall be trustees of the syndicate, with power to make calls on the subscribers from time to time on their respective shares and receive all moneys paid thereon, and to conduct the affairs of the syndicate in such manner as they shall think fit, subject as hereinafter provided.

As the consideration for his assignment of the said contract, the said trustee shall be credited on the books of the syndicate with a sum of — dollars in satisfaction of calls to the like amount in the aggregate of the — shares subscribed for by him hereunder equally between them.

Subject to the last clause, and as soon as — shares shall have been subscribed for, the subscribers shall pay to the said trustees the sum of — dollars on each share subscribed for by them respectively by way of call thereon.

The said purchaser shall at his own expense, as soon as — shares shall have been subscribed for and all payments made under the last clause, execute and do all such assurances and things as shall be necessary to vest the said contract, or his interest thereunder, in himself and the other said trustee as such trustees aforesaid.

At any time after the said — shares shall have been subscribed for, the trustees may sell the said contract and the benefit thereof, or after having acquired the said patent may sell the same in its entirety, or for any district or districts, to any private person or persons, or to any firm or joint stock company with limited liability; and may form or promote the formation of any such company, and agree to accept as the consideration for any such sale a sum in cash or fully paid-up shares or debentures of the said company, or other valuable consideration, as they shall think fit, subject to any resolution in general meeting which may be passed by the syndicate as hereinafter provided.

No dealing with the said contract or the patent otherwise than by way of sale as aforesaid shall take place unless the same shall have been authorized by resolution as aforesaid.

Three days' notice at least of any meeting shall be given to the

other subscribers by the persons calling the same, who must be any five at least of the subscribers generally, including (or excluding) the trustees or either of them, and all meetings shall be held within a radius of — miles from, etc.

Each share shall confer one vote, which may be given by proxy in writing, and a bare majority of the votes given at any such meeting shall be sufficient to pass or defeat the resolution.

This agreement shall become void if — shares aforesaid shall not be subscribed for at or before the — day of — next.

Any notice intended to be served by the trustee on any subscriber may be served on him personally, or by leaving the same at his then or last known place of abode or business, or by sending the same through the post-office addressed to him prepaid.

In witness, etc.

#### 5414. Contract for sale of ice.

This agreement made this — day of —, 19—, by and between — of the city of —, state of —, parties of the first part, and — of the city of —, state of —, parties of the second part, witnesseth:

In consideration of the covenants and conditions hereinafter mentioned, first parties hereby agree to furnish second parties with all the ice that they may require to carry on their ice business in said city for the period of — years from and after —, —, at the rate of — (\$—) per ton, to be paid for monthly from and after —, —.

Second parties hereby agree to purchase from first parties all the ice necessary to carry on their ice business in said city for the period of — years from and after —, and to pay first parties therefor the sum of — (\$—) per ton, to be paid monthly from and after —, —.

It is hereby further agreed by and between the parties hereto that, should first parties, during the continuance of this contract, be compelled, by reason of any open winter or otherwise, to harvest ice at a point distant from the — river, that second parties shall pay the first parties, in addition to the — cents

(\$——) per ton hereby agreed on, the additional cost per ton to first parties in harvesting, delivering and caring for said ice during that season or seasons.

It is hereby further agreed by and between the parties hereto that second parties shall at all times keep accurate and correct books of account of their ice business during the continuance of this agreement, and that the books of account so kept shall at all times be open to the access and inspection of the first parties.

1. Hickey v. O'Brien, 123 Mich. 612.

#### 5415. Logging contract.

This agreement entered into this —— day of ——, 19——, by and between ——, party of the first part and ——, party of the second part, witnesseth:

The first party hereby sells and agrees to deliver to said second party, at —— river's mouth, on the ice, —— feet of —— logs to be cut during —— years from date hereof on property described as follows: (description), and agrees to boom said logs in a good, substantial manner, as logs are usually boomed on ice; second party agrees to furnish boom chains; said logs shall be scaled by first party's scaler as delivered on the ice, and —— per cent. shall be deducted from such scale and shall be considered as the amount of logs for the purpose of making payments hereunder, until the lumber which shall be manufactured therefrom is scaled and measured as hereinafter provided. In consideration whereof the second party agrees to pay the first party —— dollars per thousand feet of logs delivered as aforesaid, payable as follows: (specify). When all said logs are boomed as aforesaid they shall be counted by the parties hereto, and an account made of the exact number thereof, and said second party agrees to move said logs as soon as practicable after the ice goes out, to his saw mill at ——, and to begin sawing same as soon as gotten thereto, and steadily and continuously to saw thereon until all are sawed, and to saw the same into lumber and so trim the same as to make as much merchantable lumber as possible; and said lumber shall not be sawed to exceed —— of an inch full, and no shingles shall be made therefrom; as said lumber comes from the trimmer it shall be carefully scaled and meas-



ured by a competent scaler agreed upon by the parties, and in scaling same, all mill culls and pieces — feet and less in length shall be thrown out and all the rest shall be considered merchantable; the final settlement of — dollars per thousand feet shall be made and based on the scale and measurement made by such scaler and his decision in the premises shall be final and conclusive.

In witness, etc.

(Signatures, seals, two witnesses.)

#### 5416. Contract for sale of fruit.

This agreement made this the — day of —, 19—, by and between — of the city of —, state of —, and — of city of —, state of —, witnesseth:

That the said — hereby agrees to deliver and sell, and does sell, unto the said — — tons of good, prime, wood-evaporated apples at — cents per pound, to be packed in — pound boxes, net weight; — same to be delivered on or before —, —, F. O. B. cars at —; terms, sight draft, with bill of lading attached. And said — agrees to buy aforementioned stock on terms and conditions as specified. And it is agreed that said — may furnish — tons more on same terms, if they manufacture them. Weight guaranteed.

1. *Town v. Jepson*, 133 Mich. 676.

#### 5417. Sale of horse with warranty.

Know all men by these presents, that I, —, party of the first part, in consideration of the sum of — dollars, to me in hand paid by —, party of the second part, the receipt whereof I do hereby acknowledge, have this day bargained, sold, granted, transferred and delivered, and by these presents do hereby bargain, sell, grant, transfer and deliver unto said second party, one bay horse, with white forehead; to have and to hold the same unto the said party of the second part, his executors, administrators and assigns. And I do for myself, my heirs, executors and administrators covenant and agree, to and with said second party, to warrant and defend the said described horse hereby sold unto said second party, his executors, administrators and assigns,

against all and every person and persons whomsoever, and I further warrant the said horse to be sound in every respect, to be free from vice, to be well broken, and kind and gentle in single and double harness, and under the saddle.

In witness whereof, I have hereunto set my hand and seal this — day of —, 19—.

#### 5418. Contract to sell lumber.

Memorandum of agreement, between — and —, of the city of —, county of —, state of —, first parties, and — and —, of city of —, county of —, state of —, second parties.

First. That the said second parties agree to take and receive from the first party aforesaid, all the cherry, whitewood, beech and maple lumber that their mill is able to get out up to the — day of — next, 19—.

Second. That the price to be paid for the same is \$— per thousand feet for cherry, and \$— per thousand feet for whitewood, beech and maple, delivered on board vessel at —.

Third. The same lumber is to be measured by the parties interested, or others chosen by them.

Fourth. The said — and —, second parties, to pay said — and —, first parties, \$— on the first day of — next, on logs already purchased by them, said amount to be secured by logs, and placed in the name of — on the books of — and —, first parties, and thereafter all logs to be purchased in the name of said —; and the said — and —, second parties, agree to pay on them \$— on the first of —, and \$— on the — of —, 19—. The balance of payments to be made on delivery of said lumber, in drafts payable at thirty and sixty days' sight in —.

Fifth. It is understood that if the measurement of said lumber overruns the scalage the difference belongs to said —, and all lumber remaining unshipped after the — of —, 19—, to be paid for at that time in drafts as above mentioned.

**5419. Contract to sell nursery stock.**

The following agreement, made and entered into this — day of —, 19—, between — & — of city of —, state of —, of the first part, and —, formerly of city of —, state of —, now of city of —, state of —, of the second part, witnesseth:

— & — agree to furnish the said —, for the fall packing of —, such nursery stock as the said — may require, at the following prices, it being mutually understood by both parties that such varieties of trees and such ornamentals as — & — do not grow or have on hand the said — shall have the privilege of buying of other parties, unless the said — & — prefer to buy such stock of other parties for the said —, and, in case of all such purchases by either party, the said — shall pay to — & — — cents for each tree so purchased, in addition to the cost of the stock, for packing the same.

It is understood that the said — is to act as general agent for the said — & — for the sale of nursery stock, with the privilege of using orders and letter-heads printed in the name of the firm — & —.

(Here follows a list of trees and prices.)

All the above stock to be first-class, billed upon our (— & —) packing ground, and delivered at the depot without extra charge. The said — to furnish one man, and assist, himself, in packing.

The party of the second part agrees to purchase his nursery stock, as above mentioned, of the parties of the first part, and to pay cash for the same (or give acceptable notes) at the time of delivery. The said — & — agree to furnish agents' certificates to such men as the said — may employ.

In consideration of the above-mentioned privileges the said — agrees to protect the said — from all harm and expense of suit in case of prosecutions arising from sales and collections of said nursery stock, or from any other cause, the same as if he were selling in his own name; it being understood that the said — & — have no interest or profits from the retail sales of the said —.

— & —, (Nurserymen.)

— (Agent.)

(City) —, (State) —, —, 19—.

It is hereby mutually agreed that the above contract, with all conditions and specifications, is renewed and continued for the spring sale of —, except the changes in prices in —, which are to be the prices for spring.

— & —, (Nurserymen.)  
— (Agent.)

(City) —, (State) —, —, 19—.

We, the undersigned, agree to renew within contract for the fall of —, with the following changes: That dwarf pears are to be at — cents, and apples are left open for future agreement.

— & —, (Nurserymen.)  
— (Agent.)

—, Witness.

— & —, Nurserymen, (City) —, (State) —:

You will please have dug and furnish me the following nursery stock, for which I agree to pay the prices set opposite the respective articles, amounting to \$ —, in cash, on delivery at —, —, in the fall of —. Should any part of such stock be omitted, through miscount or otherwise, the price of such part shall be deducted. No countermands accepted.

- crab apples.
- standard pears.
- dwarf pears.
- plum trees.

It is mutually agreed that the stock in this contract is not warranted further than to be delivered in good condition, and the order not subject to countermand, and must be taken according to the printed condition hereon. Agents not allowed to plant stock when delivered, and no outside agreement or bargain by the agent shall in any way affect this contract. The fruit trees, if any, are to be grafted or budded, and all the above are to be delivered in a thrifty and healthy condition. Standard apple, standard pear, and cherry trees are not to be less than — feet in

height; plum trees not less than — feet; dwarf pear trees not less than — feet.

Date, —, —.

Agent's name, —.

Full name of purchaser, —.

Purchaser's signature, —.

1. Bronson v. Herbert, 95 Mich. 478, 55 N. W. 359.

#### 5420. Agreement to sell crop of tomatoes.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the said party of the first part, for the consideration hereinafter mentioned, does hereby covenant and agree to sell and deliver to said second party at his cannery at —, all the tomatoes grown on — acres of land, to be planted by the said party of the first part, on his farm situated near —, during the season of 19—, said tomatoes to be delivered in such state of ripeness and in such order as the said second party shall require (otherwise the second party shall not be required to receive and pay for same).

It is also agreed that no tomatoes are to be delivered on Saturdays except by special agreement from time to time.

In consideration thereof the said second party does hereby agree to pay the said first party the sum of \$— per ton (2,000 lbs.) for the tomatoes delivered as aforesaid, the tomatoes to be weighed at the scales convenient to said cannery. The said second party further agrees to pay for said tomatoes on the — day of —, and — day of —, 19—.

It is further agreed by the party of the first part that he will not grow or be interested in tomatoes other than those grown for the party of the second part on the acres herein specified and that he will not permit any other person to grow tomatoes on the same farm unless they be grown for the said party of the second part.

In witness whereof, the said parties have hereunto set their hands and seals this day and year above written.

**5421. Contract for sale of electrical machinery.**

This agreement made and entered into this —— day of ——, 19——, by and between —— company, hereinafter designated as the seller, and —— company, hereinafter designated as the purchaser, witnesseth:

That in consideration of the covenants and agreements hereinafter specified and the payments to be made by said purchaser, said seller hereby agrees to sell and convey unto said purchaser the following described property, to wit: (here describe the property).

It is mutually agreed that the above-described property shall be delivered by said seller to said purchaser at their ——, in the city of ——, in the state of ——, and transportation and cartage charges for such delivery shall be paid by such purchaser. Also that said property shall be installed in purchaser's said plant at the expense of the purchaser and shall be deemed personal property, no matter how attached to the real estate.

It is further mutually understood and agreed that the title to said property shall not vest in the purchaser until it is fully paid for, and if default is made in the payment of the purchase-price for said property, whether evidenced by note or otherwise, the right is hereby expressly reserved and given to enter the premises where said property may be and move the same.

Said purchaser agrees to care for and safely keep all said property until the same is fully paid for, and to make good any loss to said seller by reason of any injury that may occur to said property.

Said seller hereby agrees to properly install said property in the plant of the said purchaser in a thorough and workmanlike manner; but shall not be held responsible for work done, apparatus furnished or repairs made by others. Nor shall it be held responsible or liable for any loss, damage, detention or delay caused by fire, strikes, civil or military authority, or by insurrection or riot, or by any other cause beyond its control.

To enable said seller to proceed with the installation and construction of said apparatus, the purchaser agrees to furnish promptly on demand of the seller, all the necessary information as to details to be determined by the purchaser.

Said purchaser agrees to furnish brick or stone foundation required for said apparatus, also the necessary power, including shafting and belting.

Said seller further agrees to furnish the services of an engineer for a period of — days after the installation of said machinery for the purpose of giving instruction in operating the same, and the purchaser agrees that if such services are desired beyond the period above mentioned it will pay therefor at the rate of \$— per day and traveling expenses.

The said seller guarantees the apparatus specified herein to be of the full working capacity as rated, and agrees to correct any defect in the same which may develop under normal use within one year from the starting thereof. The apparatus shall be considered as starting when first put in operation.

The said purchaser is to have thirty days from the starting of said apparatus to test and try the same, and if it fulfills in a satisfactory manner all conditions herein provided the said purchaser, at the end of said thirty days' test, hereby agrees to pay to the said seller for said property and the installation thereof the sum of \$—, whereupon said property shall be and become the property of the said purchaser.

In witness whereof, the parties have hereunto set their hands and seals this day and year above written.

## AGREEMENTS FOR SALE AND PURCHASE OF LAND.

### 5422. Agreement for sale and purchase of land, buildings and interests therein.

Agreement made the — day of —, 19—, between — of —, the vendor, of the first part, and — of —, the purchaser, of the second part.

The said vendor hereby agrees to sell, and the said purchaser to purchase, for the sum of — dollars, all that parcel of land, with the buildings thereto belonging, situate at —, in the county of —, bounded and described as follows (set out record description): All which said premises are delineated in the plan hereto annexed, and signed by both parties hereto: together with

all the rights, easements and appurtenances hereunto belonging, or in any wise incident or appertaining.

And the vendor further agrees that he will at his own expense prepare, and within — days from date hereof deliver to the said purchaser, or to his attorneys, an unexecuted deed of said premises, or will furnish him with other sufficient information to enable him to examine the title thereto.

Should the purchaser insist on any objection to the title or conveyance which the vendor may be unable or unwilling to remove or comply with, the vendor may at any time rescind this agreement of sale, and in that event he shall return the deposit to the purchaser, who shall not be entitled to any interest, damages or costs.

If any error or omission affecting the quantity of land shall be discovered in the description of the property before the actual conveyance of the same, but not afterward, compensation shall be allowed or given as the case may require.

A deposit of — dollars of the purchase-money shall be paid by the purchaser to the vendor on the execution hereof, and the balance thereof shall be paid to him on the — day of — next, at the office of his solicitor, or as the vendor shall direct; and thereupon the vendor and all other necessary parties, if any, shall execute a proper conveyance of the premises to the purchaser in fee simple, free from all encumbrances.

Possession of said premises shall be delivered to said purchaser on the said — day of — next, and as and from that day all rents, taxes or other income or charges shall, if necessary, be apportioned between the vendor and purchaser.

If from any cause whatever, except from the vendor's wilful neglect or default, the completion of the purchase shall be delayed beyond the said — day of — next, the purchaser shall pay interest at the rate of — per cent. per annum on the balance of his purchase-money from that day until the purchase shall be completed.

If the purchaser shall neglect or fail to comply with the foregoing stipulations on his part, the vendor shall be at liberty to rescind the present sale and to resell the premises by auction or



private contract; and any deficiency in price which may happen on such resale, together with all expenses attending it, shall immediately afterward be repaid by the present purchaser to the vendor, and shall be recoverable as liquidated damages.

Witness the hands of the parties hereto.

1. See, generally, ante, vol. 2, § 1253 et seq.

**5423. Agreement for sale and purchase of dwelling-house and land.**

This agreement, made this — day of —, between — of —, the vendor, of the one part, and — of —, the purchaser, of the other part, witnesseth that said vendor, hereby agrees to sell to the purchaser, who agrees to purchase, for the sum of — dollars, the fee simple, in possession, free from all encumbrances, of and in all that dwelling-house, with the stable and other outbuildings and a garden and other land thereto belonging, situate on — street, in the town of —, and state aforesaid, heretofore occupied by said vendor, all which said premises are delineated on a plan hereto annexed and signed by the parties hereto; together with all the rights, easements and appurtenances thereto belonging; which said premises are sold and purchased upon and subject to the following terms and stipulations, namely:

That the purchaser shall pay to said vendor, upon the execution hereof, a deposit of — dollars, on and in part of his purchase-money, and pay him the residue thereof on the — day of — next, when the purchase shall be completed;

That the purchaser shall take, and on the completion of the purchase pay for, the fixtures and fittings in the said dwelling-house and buildings, and specified in the schedule hereto annexed at the valuation therein mentioned;

That on payment of the purchase-money, and the value of said fixtures and fittings, the vendor shall execute a proper conveyance of the property according to the stipulations herein contained, which conveyance shall be prepared by and at the expense of the vendor, and sent to the said purchaser for approval — days prior to the said — day of — next;

That if, from any cause whatever, the purchase shall be de-

layed beyond the —— day of —— next, the purchaser shall henceforth be entitled to the rents and profits of the property, and shall pay interest at the rate of —— per cent. per annum on the purchase-money till the completion of the purchase;

That if any obstacle or difficulty shall arise in respect to the title, the completion of the purchase, or otherwise, the vendor shall be at full liberty, at any time, to abandon this contract on returning the deposit money only to the purchaser;

That if the purchaser shall refuse or neglect to complete his purchase at the time hereby appointed, his deposit money shall be absolutely forfeited to the vendor, who shall be at full liberty, at any time afterward, to resell the property, either by public auction or private contract; and the deficiency, if any, occasioned thereby, together with all losses, damages and expenses of and attending the same, shall be borne and paid by the purchaser, but any increase in the price obtained at such sale shall belong to the vendor;

That time in all respects shall be of the essence of the contract;

That for the due performance of this contract each party binds himself unto the other in the sum of —— dollars, which shall be recoverable as liquidated damages between them in addition to and irrespective of any other right, liability and remedy which either of them may have acquired or be subject to by virtue hereof.

In witness whereof, etc.

#### 5424. Contract for sale of lot on payments.

This agreement witnesseth: That —— of ——, hereinafter designated as the seller, has bargained and sold and hereby agrees to convey to —— of ——, hereinafter designated as the buyer, upon the terms and conditions hereinafter expressed, lot numbered —— in —— in —— county, state of ——; and the said buyer hereby agrees to pay to the seller for said lot the sum of —— dollars (\$——), payable one dollar (\$1.00) on the signing of this contract and the balance in instalments of fifty (50) cents per week in advance until said purchase-price is paid in full, without relief from valuation or appraisal laws.

It is agreed that the seller shall pay all taxes against said lot up to the time of execution of deed and that the buyer shall keep all public assessments against said lot paid as the same become payable, if any be made.

It is agreed that when said purchase-price and all public assessments (should any be levied) have been paid in full, the seller will execute to the buyer a warranty deed, conveying said lot free and clear of all encumbrance.

The unpaid balance of purchase-price may be paid at any time, and a discount of five per cent. of such balance will be allowed.

It is agreed that in event the buyer shall be sick and on that account unable to follow his usual vocation, and shall furnish the certificate of a physician as to such sickness, satisfactory to seller, the weekly payments shall be suspended during the continuance of such disability, but in no event shall such payments be suspended at any one time for more than ten (10) consecutive weeks.

If said special assessment and special taxes, or either, are not paid within thirty (30) days after the same become due and payable, or if the weekly payments shall be more than two weeks delinquent (except in case of sickness, as hereinbefore provided) the seller may, at her option, either declare the entire balance of the purchase-price due and collectible, or she may rescind this contract to sell and convey said lot and take possession thereof; and in the event of such rescission, all payments already made by the buyer shall be taken and retained by the seller, not as penalty, but as and for liquidated damages for the breach of this contract, and failure or delay to exercise said option at the time of any default shall not be or operate as a waiver of the right to exercise such option at any time hereafter.

It is agreed that a letter addressed to the buyer at — shall be sufficient (but not exclusive) notice of the exercise of said option.

This contract shall not be sold, assigned or transferred, nor shall said lot be sold or leased, nor any building placed thereon before said lot is fully paid for without the written consent of

the seller, and in event of any sale, assignment, transfer or lease, or building placed thereon, without such written consent, the seller shall have the right to exercise the option hereinbefore provided for.

In event of sale, transfer or assignment of this contract with such consent the last assignee or grantee shall succeed to all the rights and liabilities of the buyer, and the provision of this contract in reference to the sickness of the buyer and notice to the buyer shall be taken and held to refer only to the sickness and notice to such assignee or grantee, according to the terms of the assignment and consent hereto attached.

Executed in duplicate, this the — day of 19—.

\_\_\_\_\_.  
\_\_\_\_\_.

#### 5425. Agreement to deed land to railroad company.

This agreement made this the — day of —, 19—, by and between — of —, and — railroad company, a corporation, witnesseth:

That in consideration of the payment of — dollars by the — railroad company to —, receipt of which is hereby acknowledged, the said — agrees to sell and convey to said railroad company upon the further payment of said — of the sum of — dollars within — months from the date hereof, the following described real estate: (here insert description), with usual covenants, to be prepared by said railroad company at its own expense, said deed to convey a clear title, and to include release of damages to adjoining or neighborhood real estate of the said —, accrued or that may accrue hereafter from the construction and operation of a railroad upon the land agreed to be conveyed to said railroad; and it is further agreed that if said railroad company should fail to make further payment as herein agreed to be made, the payment as herein recited shall be forfeited, and said railroad company shall not be entitled to the return thereof or any part thereof.

In testimony whereof, etc.

**5426. Agreement for sale of land without special conditions.**

Agreement made the —— day of ——, 19——, between —— of ——, of the first part, and —— of ——, of the second part, witnesseth:

The said first party, for the consideration hereinafter mentioned, doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with the said second party, his heirs and assigns, that he, the said —— party, shall and will, on or before the —— day of —— next, at the proper cost and charges of the said —— party, his heirs and assigns, by a good and sufficient deed of conveyance, free from all encumbrances, grant, convey and warrant unto the said second party, his heirs and assigns, all that parcel of land, etc., together with all and singular the buildings and other improvements and appurtenances thereunto belonging.

Said second party, for himself, his heirs, executors and administrators, doth hereby covenant, promise and agree with the said first party, his heirs and assigns, that said second party shall and will well and truly pay unto the said first party, his heirs and assigns, the sum of —— dollars upon the delivery of said deed of conveyance.

In witness, etc.

**5427. Sale and purchase where part of purchase-money is paid by mortgage.**

Agreement made the —— day of ——, 19——, by and between —— of ——, the vendor, and —— of ——, the purchaser, witnesseth:

The said vendor hereby agrees to sell and convey to the said purchaser the messuage or tenement and lot or piece of ground thereunto belonging, situate, etc., for the sum or consideration of —— dollars, to be paid by the said purchaser in way and manner as follows: namely: —— dollars to be paid by the purchaser's note, payable in —— years from the date hereinafter mentioned, with interest, payable semiannually at the rate of —— per cent. per annum, secured by a mortgage of said premises, made in the usual form, with power of sale; and —— dollars, being the remainder of said consideration, to be paid upon the delivery to

said purchaser of a full and satisfactory deed of conveyance for the said premises, free from all encumbrances, and possession thereof, on or before the — day of — next. And the said purchaser hereby agrees to purchase the above-described premises from the said vendor for the price or sum above mentioned, and to pay and settle for the same in the way and manner and at the time above set forth. The conditions of this agreement to extend to the heirs, executors, administrators and assigns of both contracting parties.

In witness, etc.

**5428. Agreement for sale of building lot with option to purchase adjoining lots.**

An agreement made the — day of — between —, the vendor, and —, the purchaser, witnesseth:

The vendor will sell and the purchaser will buy in fee simple and unencumbered all that parcel of land numbered — on the plan hereto annexed for price of — per square foot, to be paid upon the tender of a good and sufficient deed.

In consideration of which agreement, the purchaser shall have the option at any time during a period of — months from the date hereof, of purchasing all or any of the lots delineated on said plan in addition to the lot now agreed to be purchased at the price of — per square foot.

Such option shall be exercised by the purchaser giving to the vendor one calendar month's written notice of his intention to purchase and specifying the lot or lots to be purchased, and such purchase shall be completed at the office of the vendor's attorney (known to the vendor), upon the payment by the purchaser to the vendor of the price for each lot of — per square foot: Provided always, that if the purchaser, having given notice as aforesaid, shall fail to complete the purchase comprised in such notice in accordance herewith, he shall not be entitled at any subsequent time to exercise such option in respect of the same premises, and the option shall thereupon be determined without prejudice to any rights which the vendor may have against the purchaser by reason of such default. For all purposes connected

with the exercise of the option hereby given, time shall be deemed to be of the essence of the contract.

The property is sold and will be conveyed subject to the restrictions and stipulations contained in the schedule hereto annexed for the benefit of the vendor's adjoining land, and the conveyance to the purchaser shall contain such provisions and covenants as the vendor may reasonably require, for giving effect to and enforcing the said restrictions and stipulations.

In witness, etc.

(Signatures of both parties.)

**5429. Agreement for purchase subject to mortgage which purchaser assumes.**

Agreement made this — day of —, 19—, between — of —, county of —, state of —, of the first part, and — of —, county of —, state of —, of the second part.

The first party hereby agrees to sell, and the second party to purchase, a certain estate situated on — street, in said —, and bounded as follows, etc.

Said premises are to be conveyed within — days from this date by a good and sufficient warranty deed of the first party, conveying a good and clear title to the same free from all encumbrances, excepting a mortgage thereof made by said first party to — of —, for — dollars, dated the — day of —, and recorded in — registry of deeds, book —, page —, which said mortgage, and the interest thereon to the date of the conveyance hereby contracted to be made, the said second party is to assume and pay as part of the purchase-money of said premises.

For such deed and conveyance the second party is to pay the further sum of — dollars, of which — dollars have been paid this day, — dollars are to be paid in cash upon the delivery of said deed, and the remainder is to be paid by the note of the second party, dated the — day of — next, bearing interest at — per cent. per annum, payable semiannually, and secured by a mortgage in the usual form upon the said premises, such note to be payable to the order of the said first party in — years from the date thereof.

Full possession of the said premises, free of all tenants (sub-

ject to a lease of the same, made by the said first party to ——— for the term of ——— years from ———), is to be delivered to the second party at the time of the delivery of the deed, the said premises to be then in the same condition in which they now are, reasonable use and wear of the buildings thereon only excepted.

The deed is to be delivered and the consideration paid, if the purchaser requires it, at the registry of deeds.

In witness whereof, the said parties hereto, and to another instrument of like tenor, set their hands and seals on the day and year first above written.

#### **5430. Agreement for purchase of farm land on long time.**

Agreement made this ——— day of ———, 19——, between ——— of ———, of the first part, and ——— of ———, of the second part.

The said first party, in consideration of ——— dollars, to be paid to the said first party and of the covenants to be performed by the said second party, as hereinafter expressed, hereby agrees to sell to the said second party all that certain tract of land situated in the township of ———, county of ———, and state of ———, known and described as follows, etc., with the privileges and appurtenances thereunto belonging.

The said second party, in consideration of the covenants herein contained on behalf of the said first party, agrees to purchase of the said first party the above-described land, and to pay therefor to the said first party or his legal representatives ——— dollars, in manner following, that is to say (state the terms of payment), with interest, to be computed from the date hereof, at the rate of ——— per cent. per annum on the whole sum that shall be from time to time unpaid, and to be paid annually; both principal and interest to be paid at ——— aforesaid; and also that he will, so long as any part of the principal or interest of the said consideration money remains unpaid, well and faithfully, in due season, in each and every year, pay or cause to be paid all taxes and assessments, ordinary and extraordinary, that may for any purpose whatever be levied or assessed on said premises or on this contract; and that he will not commit, or suffer any other person to commit, any waste or damage to the said lands or the appurte-



nances except for firewood or otherwise for his own use, or while clearing the lands for cultivation in the ordinary manner.

That said first party further covenants and agrees with the said second party that upon the faithful performance by the said second party of the covenants and agreements by him to be performed, and upon the payment of the several sums of money above mentioned, and the interest thereon, as above mentioned, to the said first party, thereupon the said first party will well and faithfully execute and deliver a good and sufficient deed or deeds, and thereby convey to the said second party, his heirs and assigns a good and unencumbered title in fee simple to the above-described premises with their appurtenances.

The said second party may immediately enter on the said land, and remain thereon and cultivate the same as long as he shall fulfil and perform all the agreements hereinbefore mentioned on his part to be fulfilled and performed, and no longer; and if he shall, at any time hereafter, violate or neglect to fulfil any of said agreements, he shall forfeit all right or claim hereunder, and be liable to said first party for damages, and shall also be liable to be removed from the said land in the same manner as is provided by law for the removal of a tenant who holds over after the expiration of the time specified in his lease. And it shall be lawful for the said first party, at any time after the violation or nonfulfilment of any of the said agreements on the part of the said second party, to sell and convey the land, or any part thereof, to any other person whomsoever; and the said first party shall not be liable in any way, or to any person, to refund any part of the money which he may have received on this contract, or for any damages on account of such sale. Time is and shall be deemed and taken as of the essence of this contract, and unless the same shall, in all respects, be complied with by the said second party at the respective times and in the manner above limited and declared, the said second party shall lose and be debarred from all rights, remedies, or actions, either in law or equity, upon or under this contract.

This contract is hereby declared to be binding on the respective representatives of the parties hereto.

In witness, etc.

**5431. Agreement for purchase of land with provision for payment of purchase-money by instalments, the purchaser becoming tenant to vendor.**

Agreement made this — day of —, 19—, between — of —, party of the first part, and — of —, party of the second part.

The said first party, in consideration of — dollars to him duly paid, hereby agrees to sell unto the said second party all that, etc., for — dollars, which the said second party hereby agrees to pay the first party as follows: — dollars on the — day of — next; — dollars on the — day of —, etc., with interest on each instalment from the date of these presents at the rate of — per cent. per annum, until the same is paid.

Said second party also agrees to pay all taxes and assessments that shall be taxed or assessed on said premises from the date hereof until the said sum shall be fully paid as aforesaid.

And the said first party, on receiving such payment as above mentioned shall at his own proper cost and expense execute and deliver to the said second party, or to his assigns a good and sufficient deed of said premises with full covenants of warranty.

The said second party shall have possession of said premises on the — day of —, 19—, and shall keep the same in as good condition as they are in at the date hereof, until the said sum shall be paid as aforesaid.

Until the completion of the purchase on or before the — day of —, the said second party shall hold the said premises as tenant to the vendor at the yearly rent of — dollars, payable semiannually on the — day of — and the — day of — in each year, the first of such payments to be made on the — day of —. In case the rent paid in any year shall exceed — per cent. per annum upon the amount of the purchase-money which shall in any such year for the time being remain unpaid, such excess shall go and be applied in reduction pro tanto of the principal of such purchase-money.

If said second party shall fail to perform this contract, or any part thereof, said first party shall, immediately after such failure, have the right to declare the same void, and retain whatever may have been paid on said contract, and all improvements that may

have been made on said premises, and may consider and treat the second party as his tenant holding over without permission, and may take immediate possession of the premises, and remove the second party therefrom.

The stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness, etc.

**5432. Agreement for sale of building lots, the vendor to make advances.**

Agreement this —— day of ——, 19——, between —— of ——, the vendor, of the one part, and —— of ——, the purchaser, of the other part.

The vendor agrees to sell, and the purchaser agrees to purchase, for —— dollars, being at the rate of —— dollars for each square foot of land comprised in the parcel hereinafter described, all that piece of land situate, etc., containing —— square feet, and delineated in the plan hereto annexed, and therein colored red, with the appurtenances, in fee simple in possession, free from all encumbrances, with the right of using and enjoying the streets adjoining the same, and the common passageway shown in said plan, and all outlets thereof, in common with all other persons entitled to use and enjoy the same.

The purchase-money shall be paid by the purchaser to the vendor on or before the —— day of ——, 19——, at the office numbered —— on —— street, or elsewhere, as the vendor may direct; and instalments of such purchase-money may be paid at any time, and the vendor shall convey to the purchaser at any time the lot of land upon which any house shall have been built in the manner hereinafter provided upon the payment of the above-named stipulated price of such land, and all advances made by the vendor in respect of the house built upon the same. The purchaser shall pay to the vendor interest at the rate of —— per centum per annum on said purchase-money from the —— day of ——, and interest at the same rate on all advances made by the vendor to the purchaser as herein contemplated, until the said purchase shall be completed.

The purchaser shall be entitled to the immediate possession of

the said piece of land, and shall bear and pay all taxes, rates and assessments in respect to the same as if the said piece of land had been conveyed to him.

The purchaser shall not dig for or remove from said piece of land or any part thereof any gravel, sand, clay or other substance, beyond the necessary excavations for the buildings to be erected thereon, without previous written consent of the vendor.

The purchaser shall, within one calendar month after the execution hereof, commence, and without intermission and with reasonable expedition proceed with the erection of — houses on the said piece of land, and shall completely finish, fit for habitation, the said houses on or before the — day of —.

Such houses shall front upon — street aforesaid, and shall be erected in a proper, workmanlike manner, in accordance with plans and elevations, to be first approved of in writing by the vendor's architect, and shall be built of good materials, and the said houses shall be set back — feet from said — street.

If the purchaser shall in all respects observe and perform his part of the agreement, the vendor will advance to him, for the purpose of assisting him in the erection of the said houses, — dollars in respect of each house at the times and in the sums following, namely: —. But it is hereby agreed that the vendor shall not be required to make any advance in respect of any house unless such house, exclusive of the value of the land, shall be equal in value to double the amount of the sums, if any, then advanced thereon, and of the sum or sums so required to be advanced. Application for each advance shall be made not less than — days before the same is payable.

The purchaser shall, at his own expense, insure the buildings to be erected on said land, and any building materials for the time being thereon, for the benefit and security of the vendor, in a sum or sums equal in amount to any advances made pursuant to this agreement.

The vendor shall have a lien upon said land, and all the buildings for the time being erected or in course of erection thereon, and upon all the building materials and other things which shall for the time being be brought upon the said land, or the streets

and passage-ways adjoining the same, as well for the said purchase-money and the interest thereon, as also for such sums of money as the vendor may have advanced or paid as herein provided.

When and as soon as the purchaser shall have paid to the vendor the purchase-money of said land or any houselot of the same, together with all sums of money advanced or paid by the vendor in respect to any building or buildings thereon, pursuant hereto, the vendor shall execute a proper conveyance of said land or houselot, and such deed shall contain covenants on the part of the purchaser, his heirs, executors, administrators and assigns, with the vendor, his heirs and assigns, that no building which shall be erected upon said piece of land shall be used for the purpose of carrying on any trade, business or manufacture, or for any purpose which may be or become a nuisance or annoyance to the neighborhood, and that an area of the depth of — feet from — street aforesaid shall at all times hereafter be left open and unbuilt upon, except that bay windows may project over the same, not more than — feet from the house to which they belong; and also that the purchaser, his heirs or assigns will from time to time pay one-half of the expense of keeping in repair so much of the said passage-way as is coextensive with the said piece or lot of land.

The purchaser shall be entitled to have said piece of land conveyed to him by several conveyances, not exceeding the number of houselots into which said land may be divided, upon payment to the vendor on account of said purchase-money of the sum of — for each superficial square foot of land to be comprised in such conveyance, with interest thereon as aforesaid, and the advances made by the vendor in respect of the buildings erected on the land to be comprised in such conveyance, with interest as aforesaid, and all sums paid for insurance and the interest due in respect thereof, provided that the purchaser shall not at any time require a conveyance of part of the said land under this clause, unless at the time of such conveyance he shall have proceeded with the erection of at least — houses on the land remaining, and shall have complied in all respects with the provisions herein contained.

If default shall be made by the purchaser in the observance and performance of his part of this agreement in any particular, and time shall be deemed to be of the essence of the contract, or if he shall become bankrupt or make any composition with, or any assignment for the benefit of, his creditors, then and in such case it shall be lawful for the vendor to re-enter upon such land, or any part thereof not previously conveyed to the purchaser, and by written notice to be delivered to the purchaser, or left for him at his usual and last known place of abode, absolutely to determine this agreement so far as relates to such portion of said land as may not previously have been conveyed to the purchaser.

If this present agreement shall be determined by the vendor under the preceding clause, so much of the said land as shall not have been conveyed to the purchaser pursuant hereto, together with the buildings thereon, and all building materials which under the previous clauses hereof, are provided to be attached and belong to the said land or the buildings thereon, shall immediately after the delivery of such notice, be and remain the absolute property of the vendor, freed and discharged from all claims and demands of the purchaser in respect thereof or otherwise on account hereof, and the purchaser shall thenceforth be freed and discharged from all obligations created hereby, and which then remain unperformed.

In witness, etc.

1. See Adjoining Landowners' Agreements, ante, 5140-5143.

### 5433. Agreement for an exchange of parcels of land.

Agreement made this — day of —, 19—, between — of —, of the first part, and — of —, of the second part. Whereas the said first party is the owner in fee simple of a certain parcel of land with the buildings thereon, situate in — afore-said, bounded and described as follows, namely, etc.; and whereas the said second party is the owner in fee simple of certain parcels of land situate in said —, bounded and described as follows, namely, etc., and whereas the said parties have agreed to make an exchange by way of mutual sale and conveyance of their said respective properties, now it is agreed as follows:

That the said first party shall, in consideration of the property hereby agreed to be conveyed by the said second party to the said first party, and of the sum of money to be paid by the said second party to the said first party, as hereinafter mentioned, sell and convey to the said second party the said described land of said first party, with the buildings thereon, and the appurtenances thereof, in fee simple in possession, free from all encumbrances.

That the said second party shall, in consideration of the property hereby agreed to be conveyed by the said first party to the said second party, sell and convey to the said first party the said described land of said second party, with the appurtenances thereof, in fee simple and possession, free from all encumbrances, and shall pay to the said first party the sum of money hereinafter mentioned.

The said premises belonging to the said first party being considered to be of greater value than the said premises belonging to said second party, by the sum of — dollars, the said second party shall, upon the execution of said conveyances, pay to the said first party the sum of — dollars, the difference in value thereof.

The said exchange shall be completed on the — day of —, at the office of —, at —, when each of said parties shall, by good and proper deeds, convey the said premises belonging to him unto the other of them, free from all encumbrances.

Each of said parties shall be entitled to the possession and to the receipt of the rents and profits of the premises hereby agreed to be conveyed to him from the — day of —.

If from any cause whatever the said respective conveyances shall not be completed on or before the said — day of — next, interest at the rate of — per cent. per annum upon the sum to be paid for equality of value, as aforesaid, shall be paid by the said second party from the said — day of — next, until the completion of said conveyances.

In witness, etc.

#### 5434. Agreement for partition between tenants in common.

Agreement made this — day of —, 19—, between — of —, of the one part, and — of —, of the other part.

Whereas — of — lately died intestate, possessed of certain lands, situate at —, and shown on the plan hereto annexed, and leaving the parties hereto his only heirs at law, and whereas said parties have now agreed to make partition thereof between them, as hereinafter mentioned, so that their respective portions may thenceforth be held in severalty; now these presents witness that they, the said parties, for themselves and their respective heirs, executors and administrators, hereby mutually agree that they severally will, on or before the — day of — next, make partition of the said premises between them, and that such partition shall be carried out according to the valuation of — of —, land surveyor; and that they will severally be bound by his decision and award, which shall be made and delivered in writing on or before the — day of — next; and also that they will, on or before the — day of — next, execute mutual conveyances to each other, their heirs and assigns, of such part or parts of the said premises as shall be so awarded and allotted to them respectively; provided the said surveyor shall have then made his award, but if not, within — days next after the making and delivery thereof; and also that in such mutual conveyances there shall be inserted a proper plan of the said premises, distinguishing by colors, quantities and boundaries such parts of the said premises as shall have been so allotted and awarded to them respectively; and that the same shall afterward be held and enjoyed by them respectively in severalty accordingly; and also that, in case any inequality shall happen on either side, the party having the larger portion in value shall pay to the other of them such a sum as shall be awarded by the said surveyor as an equivalent thereto, which shall be paid to the other of them on the execution of such conveyances as aforesaid; and also that the costs and expenses of and attending the said survey and partition of the said conveyances (as well as of and attending the preparation and execution of these presents), and incident thereto, shall be borne by the said parties in equal moieties.

In witness, etc.



**5435. Agreement to purchase real estate.**

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_ will give for the property known as \_\_\_\_\_ in the city of \_\_\_\_\_, \_\_\_\_\_ county, \_\_\_\_\_, the sum of \_\_\_\_\_ dollars, upon the following terms, viz.: \_\_\_\_\_ dollars cash to be paid upon the delivery of a good and sufficient general \_\_\_\_\_ deed, the remainder of the purchase-money to be paid as follows: \_\_\_\_\_, for which said deferred payments negotiable notes shall be given bearing interest at the rate of \_\_\_\_\_ per cent. per annum, payable semi-annually, with the usual commercial clauses, to be secured by mortgage on the premises. Possession to be given upon the delivery of the deed \_\_\_\_\_. \_\_\_\_\_ will assume the taxes payable in \_\_\_\_\_ and all assessments for municipal improvements completed after this date.

This proposition is based upon a good merchantable title, to be evidenced by an abstract certified to date, to be furnished by the owner of the property. \_\_\_\_\_ will complete the purchase of said real estate within \_\_\_\_\_ days after an abstract showing a good title is delivered.

This proposition shall be treated as made to the owner of said property, and shall remain open for acceptance for the period of \_\_\_\_\_ days from this date.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_ accept the above proposition this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

**5436. Contract for sale of coal in place.**

This agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ of \_\_\_\_\_ township, of \_\_\_\_\_ county, state of \_\_\_\_\_, party of the first part, and \_\_\_\_\_ of the \_\_\_\_\_ county, state of \_\_\_\_\_, party of the second part, witnesseth:

The party of the first part, for and in consideration of \$1 (one dollar) to me in hand paid, the receipt of which is hereby ac-

knowledgeed, as well as the agreements hereinafter mentioned, does hereby bargain, sell and convey unto the party of the second part, his heirs or assigns, all the mineral, coal and iron ore in, upon and under the tract of land in the township of —, in the county of —, in the state of —, bounded and described as follows, to wit: (here describe the land); granting to the party of the second part, his heirs or assigns, as well as his and their laborers and workmen, the right to enter upon said lands at any time hereafter and search for coal and ore, and when found, to remove the same from said lands, together with all the rights and privileges incident to mining and securing said coal and ore, including the right of egress and ingress, and to take, mine and explore, occupy with such buildings and structures as may be necessary and useful for the full enjoyment of the advantages of said coal and ore, and with the refuse from said mines, and also the right to mine and remove the coal and ore of adjoining lands through, over or under said lands during the continuance of this agreement. And the party of the second part agrees, by himself, his assigns and workmen, to enter upon and make search for coal and ore upon the lands above described, and should he find coal and ore in said lands and adjoining lands of sufficient thickness, quantity and quality to justify him, the party of the second part, who opened and worked said mines, then he or his representatives or assigns shall pay to the party of the first part, his heirs or assigns, within five years after the completion of a railroad on or near the above premises, made in connection with any other leading railroad, by which said minerals can be taken to any large market, the sum of \$—— a year during the continuance of this agreement; and the failure to make these advance payments yearly upon request, or within one year after demand upon the party of the second part, shall be deemed an abandonment of this agreement of lease, but not to the injury of the second party or his assigns; and the party of the second part shall for his own use coal from his own premises until the railroad is completed.

It is also mutually understood that the stipulations herein contained shall apply to and bind the heirs, executors, administrators and assigns of the parties respectively.

In witness, the parties hereunto have set their hands and seals this day and year first above mentioned.

on the payment of rent or royalty of coal first mined thereafter. The payment of rent on coal mined and removed shall be made yearly, and all payments required by this agreement shall be made and accepted in bankable funds in the state of ———.

It is mutually understood and agreed by and between the parties hereto that the coal under any dwelling-house or other permanent buildings shall not be mined out, and as little injury to the surface of said lands shall be done as possible, in mining, removing and transportation of said coal and ore as herein contemplated.

It is further understood and agreed by and between the parties to this contract that the party of the first part agrees to grant and give to the party of the second part all the land necessary for the location, construction and occupancy of a public railroad as above contemplated.

It is further agreed that the party of the first part may mine have the right to abandon the said lands and mining at any time, and remove all his buildings and fixtures from said land upon the payment of the sum of \$—— to the said first party.

It is further understood and agreed by the parties hereto that if the party of the second part shall fail to construct or cause to be constructed the above-contemplated railroad within fifteen years from the date of this contract, the party of the second part shall pay to the party of the first part the above-named sum of \$—— per year until the railroad is constructed and mining is commenced on said premises; and the said party of the second part, by himself and his assigns and workmen, agrees to pay to the party of the first part, his legal representatives or assigns, the sum of ——— cents for each ton of ——— pounds of screened coal mined and removed from said lands herein described, and the price or rent of the ore mined or removed from said lands for such gross ton of ——— pounds shall be ——— cents for screened and cleaned coal; but it is understood and agreed that any advance payments of \$—— as above mentioned to be paid yearly that were to be made to the party of the first part are to apply

## AGREEMENT TO SELL CHATTELS—REAL AND MIXED PROPERTY.

**5437. Agreement for sale of harvest of wheat.**

This agreement made this —— day of ——, 19——, between —— of ——, the seller, and —— of ——, the buyer, witnesseth, that in consideration of —— cents per bushel, the seller hereby sells and agrees to deliver to the buyer at his warehouse at —— all the wheat raised and harvested by him on his two farms in —— township, —— county, during the present year. Said wheat is to be delivered at said store in good, clean and merchantable condition, on or before the —— day of ——, 19——, and the said buyer agrees to pay for the same immediately upon such delivery.

In witness, etc.

1. See ante, vol. 2, § 1260 and vol. 5, § 4985.

**5438. Agreement for sale of standing timber.**

Agreement made the —— day of ——, between ——, hereinafter called the vendor, and ——, hereinafter called the purchaser.

The vendor will sell and the purchaser will buy the timber and trees growing on a certain lot of land situate at the northeasterly corner of the vendor's farm in the town of ——, in —— county, said lot containing about —— acres, and being the same pointed out by the vendor to the purchaser. The purchase-price of the timber and trees is —— dollars, of which one-half part shall be paid on the signing hereof, and the balance on the —— day of ——. Such trees shall be felled with as much care as possible to avoid injury to fences and to the undergrowth of trees not cut by the purchaser. The purchaser shall make proper compensation to the vendor for all damage the vendor may sustain by the carelessness or negligence of the purchaser's workmen.

The purchaser shall not enter upon any arable fields or upon any grass land, until the crops have been gathered, and the timber is to be removed over such private roads as the vendor or his agent shall point out.

The whole of the timber and trees shall be cut down before the —— day of ——, and shall be cleared off the premises before the

— day of —, except that the cord wood may remain till the — day of — following. Everything remaining after the times mentioned shall be forfeited to the vendor.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 2, §§ 1268, 1269.

#### 5439. Agreement for sale of crop of grass.

Agreement made the — day of —, between — of —, hereinafter called the vendor, and — of —, hereinafter called the purchaser, witnesseth:

The vendor will sell and the purchaser will buy all the standing crop of grass growing on the vendor's farm, situate at —, in the county of — and state of —; the part of the farm covered by mowing grass is believed, and shall be conclusively assumed, to contain — acres.

The price to be paid is — dollars per acre, of which one-half shall be paid on the signing hereof and the balance as soon as the grass shall be cut and before it is removed, and the removal of the hay from the farm shall not be later than the — day of —.

For the purpose of mowing, making and carrying away the hay, the purchaser shall have license to enter upon the hay fields with workmen, machines, wagons and all necessary implements, but not later than the said — day of —; the purchaser agreeing not to permit any injury to the fences, gates or trees, and to make compensation for any such damage.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 2, § 1260.

#### 5440. Agreement for sale of growing crop of fruit.

Agreement made the — day of —, between —, hereinafter called the vendor, and —, hereinafter called the purchaser.

It is agreed that the vendor will sell and the purchaser will buy all that crop of apples growing on the trees of the vendor's orchard, situate at —, in the county of —, for the price of — per bushel, of which the sum of — dollars shall be paid

before any part of the crop is gathered, and the purchaser shall not be at liberty, without the consent of the vendor, to remove from the premises any part of the crop not paid for until the purchase-price thereof is paid.

The fruit shall be gathered when sufficiently mature for gathering, and the purchaser and his workmen shall have, for the purpose of gathering and taking the fruit, full liberty to enter upon the said orchard and trees with ladders and other necessary appliances.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 2, § 1260.

#### 5441. Agreement for sale of leasehold estate.

Agreement made the —— day of ——, between ——, hereinafter called the vendor, and ——, hereinafter called the purchaser, witnesseth:

The vendor will sell and the purchaser will buy at the price of —— dollars, of which the sum of —— dollars by way of deposit is now paid, the receipt of which the vendor acknowledges, the leasehold premises at No. —— ——— street, in the city of ——, for the unexpired residue of a term of —— years from the —— day of ——, granted by a lease dated the —— day of ——, now vested in the vendor subject to the yearly rent of —— dollars reserved by said lease, which has been inspected by the purchaser who shall be deemed to buy with full notice of all the contents thereof.

The purchaser shall accept the production of the last receipt for the reserved rent as conclusive evidence that nothing has been done or omitted down to the date hereof whereby the said lease is liable to forfeiture.

The purchase shall be completed and the balance of the purchase-money paid at the vendor's office on the —— day of ——, whereupon the purchaser shall have a proper conveyance of the leasehold premises from the vendor and shall be let into possession, and if from any cause the purchase-money shall not be paid on that day the purchaser shall pay interest thereon till the day of actual payment.

The vendor shall forthwith obtain all necessary consent, if any, to the assignment of the premises to the purchaser.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 2, §§ 1270, 1278.

#### 5442. Agreement for sale of leasehold interest.

Agreement made this — day of —, 19—, between — of —, hereinafter called the vendor, of the one part, and — of —, hereinafter called the purchaser, of the other part.

The said vendor agrees to sell, and the said purchaser agrees to purchase, for the sum of — dollars, all his, the said vendor's, estate, term and interest for the residue of a term of — years from the — day of —, 19—, in the premises described in a certain indenture of that day and made between — as lessor, of the one part, and said vendor as lessee, of the other part, subject to the rents, covenants, conditions, provisos, stipulations and agreements therein contained on the part of the lessee to be paid, observed and performed.

The vendor shall prepare or cause to be prepared, at his own expense, a proper deed of assignment of said leasehold property to the purchaser, and shall deliver such deed or cause it to be delivered to the purchaser or his attorney for examination not less than — days before the said — day of —.

The said vendor will on receiving said purchase-money execute such deed of assignment to the purchaser, or as he shall appoint, for all the residue of the said term, free from all encumbrances except the rents, covenants, conditions, provisos, stipulations and agreements so as aforesaid reserved and contained in the original lease of the said premises.

The said vendor will pay, satisfy and discharge all rents, taxes, rates, assessments and other outgoings for the said premises up to the said — day of —. If it is not practicable to satisfy and discharge the same, they shall be apportioned between him and the purchaser as of that day.

The purchaser, if required by the said vendor, will in said deed of assignment to him enter into a covenant thenceforth to pay the rent and perform the covenants reserved and contained in the said indenture of lease, and to indemnify the said vendor therefrom;

the purchaser will also, if required, execute a bond, in a sufficient penalty, for the same purpose.

In witness, etc.

1. See ante, vol. 2, §§ 1270, 1278.

2. See Assignments, ante, 5281, 5283, 5284.

**5443. Agreement for sale of lease, fixtures, and good will of business.**

Agreement entered into this — day of —, 19—, between — of —, the vendor of the one part, and — of —, the purchaser of the other part and each for himself, his heirs, executors and administrators.

Said vendor hereby agrees with the said purchaser to sell and assign unto said purchaser, and said purchaser agrees to buy all the workshop, warehouses, buildings and premises situate, etc., whereon the said vendor has for several years past carried on the trade or business of —, and which he now holds for the residue of a term of — years, under an indenture of lease dated the — day of —, made between —, as lessor, and the said vendor as lessee; as also all the fixtures, engines, machinery, utensils, tools and implements used or employed in carrying on the said trade or business, together with the said business and the good will of the same; upon the terms and conditions hereinafter mentioned.

If the attorney of the said purchaser shall approve of the title of the said vendor, the said vendor will, on the — day of — next, at the cost of the said purchaser, by proper deed of assignment, assign the said lease, workshop, warehouses, buildings and premises, with all usual and proper covenants, unto the said purchaser, his executors, administrators and assigns, for all the residue of the said term of — years; and also all the fixtures, engines, machinery, utensils, tools and implements employed in carrying on the said trade or business in or upon the said premises; and which said deed of assignment, in addition to the usual and ordinary covenants, shall also contain a covenant on the part of the said vendor that he will from time to time, and at all times hereafter, recommend the said purchaser to all the customers of said vendor, and use his utmost endeavors to induce them to deal with



the said purchaser; and that the said vendor shall not, at any time hereafter, either directly or indirectly, alone or in partnership with any other person or persons whomsoever, carry on the trade or business of a — at —, or any other place or places within the distance of twenty miles thereof.

Immediately upon the execution of the said deed of assignment, the said purchaser shall pay unto the said vendor — dollars, as for the purchase of the residue thereof. Also within the space of — months a valuation shall be made and taken of the said fixtures, engines, machinery, utensils, tools and implements, by two different persons, one to be chosen by each of the said parties, and who, previously to their entering on their reference, shall choose an umpire between them, whose decision, in case the said referees shall not agree, shall be binding on both parties; and in case either of the said parties shall refuse to name a referee within seven days after request by the other party, then the referee named by the other party may proceed alone, and his award shall be conclusive on both parties.

The said purchaser shall pay or secure unto the said vendor the amount of such valuation by four equal instalments, at three, six, nine and twelve calendar months. Said vendor shall remain in the possession of all said premises hereby agreed to be assigned, with full and free liberty to have, hold, use and enjoy the same in the same manner as heretofore, up to the — day of — next; and shall pay and discharge all rents, rates, taxes and other outgoings up to that period, on which day the possession of all the said premises shall be delivered to the said purchaser.

In witness, etc.

1. See Assignments, ante, 5279, 5282, 5285.
2. See Arbitration.

#### 5444. Notice of sale in bulk.

To ———,  
(at) ———.

As one of the creditors of —, doing business at No. —, — street, in the city of —, county of —, state of —, you are hereby notified that on the — day of —, 19—, I

shall consummate with said — (merchant), a purchase by me from him of his entire stock of goods in bulk, now in his (or their) above-named place of business.

Dated this — day of —, 19—.

1. Required by statute in Indiana, Michigan and perhaps other states.

2. See ante, vol. 5, § 5033.

**5445. Agreement for sale of interest of purchaser under contract of purchase.**

Agreement made this — day of —, 19—, between — of —, the vendor, and — of —, the purchaser.

Whereas by written contract dated the — day of —, 19—, the said vendor purchased of —, at the sum of — dollars, whereon he paid a deposit of — dollars, all that freehold estate situate at —, and now in the occupation of —; and the said vendor has agreed to sell the same to the said purchaser, who hereby agrees to purchase at the sum of — dollars all his right, benefit and interest whatsoever of and in the said premises under or by virtue of the said contract:

Now these presents witness that, as well in consideration of the sum of — dollars now paid by the said purchaser to the said vendor, by way of deposit, as also of the agreements on the purchaser's part hereinafter contained, said vendor hereby further agrees with the said purchaser that, on payment of the residue of the said purchase-money as hereinafter mentioned, he will, at the request, costs and charges of the said purchaser in all things, effectually release and cause to be conveyed all his right and interest of and in said premises, under or by virtue of the before-recited contract, and also the fee simple thereof, free from all charges and encumbrances, unto said purchaser, his heirs or assigns, or as he or they shall direct, the drafts of such conveyance being first approved by the solicitor for said vendor.

The said purchaser hereby further agrees that, on taking such conveyance of the said premises as aforesaid, he will duly pay the residue of the said sum of — dollars to the said original vendor, according to the hereinbefore-recited contract; and will duly fulfil the same on the part of the said vendor in all other respects, and pay all costs and expenses whatsoever of, attending,

and incident to the said purchase, and to such conveyances and assurances as aforesaid.

The said purchaser also agrees that he will at his own expense effectually indemnify the said vendor from and against all losses, damages, costs and expenses whatsoever of and attending the conveyance of the said estate and otherwise in respect thereof; and also from and against all actions and other proceedings whatsoever on account or in respect thereof under or by virtue of the said recited contract.

If the said recited contract shall not, from any cause whatever, be duly performed, this contract shall become void, and the excess of the deposit-money paid by the said purchaser as aforesaid shall be repaid to him by the said vendor, together with all expenses incurred, and all losses and damages sustained by him under or by virtue hereof.

For the due performance of this contract each party binds himself unto the other of them in the sum of —— dollars, which shall be recoverable as liquidated damages between them under or by virtue hereof.

In witness, etc.

**5446. Agreement that purchaser may retain part of purchase-money until defect in title is removed.**

Agreement made this —— day of ——, 19——, between —— of ——, the vendor, and —— of ——, the purchaser. Whereas by a contract dated the —— day of —— last, the said vendor agreed to sell and the said purchaser agreed to purchase, for the sum of —— dollars, the parcel of land in said contract described; and whereas in the course of investigating the title it is found that there is an undischarged mortgage upon the said premises, and that the amount due upon said mortgage is in dispute so that it cannot be immediately discharged, but the said purchaser has agreed to complete the said purchase immediately, on being allowed to retain the sum of —— dollars out of the purchase-money until the said mortgage shall be discharged:

Now these presents witness that, pursuant to such arrangement, said purchaser hereby agrees to pay the residue of the said purchase-money, and to complete the said purchase, whenever

the said vendor shall cause said mortgage to be discharged, and until such time to pay interest on the said sum retained out of the purchase-money at the rate of — per cent. per annum.

In case the said vendor shall be unable or shall neglect to procure a discharge of said mortgage within — calendar months from the date hereof, the said sum of — dollars so retained as aforesaid out of said purchase-money shall be absolutely forfeited and shall belong to the said purchaser, who shall be at liberty to retain the same to apply to the payment of said mortgage so far as required and as liquidated damages in respect of the said defect of title; and thereupon the said purchaser shall be no longer liable to pay or account for said sum, but shall be absolutely discharged therefrom; and the said vendor shall be discharged from all obligation to procure a discharge of said mortgage.

In witness, etc.

**5447. Agreement by vendor for giving possession to vendee before conveyance of title.**

Agreement made this — day of —, 19—, between — of —, the vendor, and — of —, the purchaser. Whereas by a written contract between the said parties dated the — day of —, the said vendor agreed to sell, and the said purchaser agreed to purchase, a parcel of land with buildings therein described; and whereas some delay is likely to occur in consummating such sale, and the said purchaser is desirous of taking immediate possession of the premises: Now these presents witness that said vendor hereby agrees that he will on the — day of — instant deliver up to the said purchaser the full possession of the said premises as if the conveyance thereof had been executed; that the said purchaser shall be at liberty to make, in a proper and substantial manner, all such alterations in and additions to the said buildings as he shall require, but subject in all respects to the approbation of the said vendor, and so that the value of the premises shall not be impaired. Such taking of possession shall not be deemed a waiver of the contract of sale, or in any manner affect the rights of the parties under it; that such taking of possession shall not be deemed an acceptance of the title to said premises; but that the same shall be considered as

taken conditionally upon, and without prejudice to, the due performance of the said contract in all respects.

In witness, etc.

### CONDITIONAL SALES OR LEASES.

#### 5448. Agreement for purchase of sewing machine on lease system.

The undersigned, of —, residing at number — on — street in said town, hereby hires of — & Co., of —, a sewing machine (description) upon the terms and conditions following:

On the sum of — dollars being paid to — & Co., in — instalments of — dollars each, the first instalment to be paid on the — day of — next, and each subsequent instalment at the expiration of each succeeding — months, the said sewing machine shall without further payment belong to the undersigned.

In case of default in the punctual payment of any instalment, or in case the said sewing machine shall be removed from my said residence without the written consent of said — & Co., or in case I shall become bankrupt, or shall compromise with my creditors, or shall assign, mortgage or part with the possession of said sewing machine, or in case said sewing machine shall be seized or attached as my property, the instalments previously paid shall be forfeited to said — & Co., who shall thereupon be entitled to resume possession of the said sewing machine, the understanding being that, until full payment of the said sum of — dollars, the said sewing machine shall remain the sole and absolute property of — & Co., and is only lent on hire to the undersigned, who will take all reasonable care of it during the hiring, and in case of damage, by fire or otherwise, will bear the loss or risk. Dated this — day of —, 19—.

#### 5449. Another form for purchase of articles on lease system.

Hired and received of — & Co., of —, the following articles (schedule), marked as above, which articles are to be used by me —, at —, for the rent and use of which, and for all and any use of other goods previously leased by them to me

—, of —, I promise to pay to them, or to their order, the sum of at least — dollars per —, and to continue such payments until the sum so to be paid for the use or rent shall equal the sum stated in the above schedule; and to keep said articles insured in a sum not less than — dollars, for the benefit of said — & Co.; and I —, agree not to remove any of said articles from the above-named place without the written consent of said — & Co. thereto; and if I fail to pay said rent as above stipulated, or remove or sell said articles, or suffer them to be attached, mortgaged or injured, I thereby forfeit all right to the said goods, and to their further use and to all moneys paid; and said — & Co. and their agents and servants may, at any and all times, enter into and upon any house, room or premises occupied by me, and view and examine all said articles, and remove the same without notice or demand, and without being deemed guilty of any trespass or wrong; and in case of such removal said — & Co. may sell said articles at once; and in case of sale they shall apply the proceeds, after payment of costs and expense of finding, keeping and selling them, to the payment of any rent or moneys due them hereunder; and in case such net proceeds are not sufficient to pay all rent or moneys due said — & Co., I agree to pay any sum still remaining due them as back rent or otherwise. The title to each of the above articles, and to each and all other goods and articles at any time leased to me, shall remain in — & Co.; and they shall remain absolute owners thereof until the full price shall be paid. But upon full payment to said — & Co. of the price named in all the leases, and all expenses, with interest on all sums as they become due until paid, at the rate of — per cent. per —, then they shall release their claim and right in the goods above leased to me; and as a guaranty fund against any damage to said goods, and expense of teaming, finding, or getting possession of them, I put into the hands of said — & Co. the sum of — dollars, which sum, or a part of which sum, said — & Co., if they choose, may apply to my credit on my lease account with them.

I have this day received an exact copy of above.

In witness, etc.

**5450. Agreement for sale and purchase of land on condition that vendor obtain a registered title.**

Agreement made this — day of —, by and between — of —, the vendor, and — of —, the purchaser, witnesseth:

The vendor agrees to sell and convey and the purchaser agrees to buy the parcel of land delineated on the plan hereto annexed for the consideration of — dollars to be paid by the purchaser upon condition that the vendor shall tender to him a title registered by decree of the land court of the commonwealth of Massachusetts as being free from all encumbrances, save only such as all decrees of registration are made subject to by provision of the land registration act: provided, however, that the said sale and purchase shall be completed within — months from the date hereof; and whenever within that period the vendor can transfer a registered title.

In witness whereof, the parties hereto have set their hands and seals the day and year above written.

**5451. Agreement for conditional sale of property.**

This agreement, made this — day of —, 19—, between — of —, first party, and — of —, second party, witnesseth:

Said first party does hereby demise and lease unto said second party the following described premises situated in the county of —, state of —, to wit: (here insert description of property) with all the rights, privileges and appurtenances thereunto belonging, to have and to hold the same for the period of — months from the date hereof.

In consideration whereof, said second party hereby agrees to pay as rent for said premises, in lawful money of the United States, without relief from valuation and appraisal laws, as follows, to wit: the sum of — dollars, cash in hand, at the execution hereof, and the sum of — dollars per month on the — day of each and every month thereafter, to and including the — day of —, 19—, and attorney's fees. Also in addition to the foregoing sums to pay as rent all taxes and assessments including the taxes for the current year, which may from time to time be levied or made against said premises by the state

of —, or by any municipal authority under its laws, at or before the time whereon they shall be payable, so as to avoid all penalties on account of the nonpayment thereof. Also at all times to keep said property insured against loss or damage from fire in some reliable insurance company to be approved by said first party in the sum of — dollars, loss payable to the first party as his interest may appear, policies for which insurance shall be delivered to the first party.

In the event that the second party shall at any time fail to pay said instalments of rent, or such taxes or assessments when due and payable, or to provide and maintain such insurance, then and in either such event, the first party may at his option either pay such taxes or assessments or provide such an insurance, in which case the amount so paid by the first party, together with interest thereon at the rate of — per cent. per annum from the date of such payment, shall be payable upon demand as part of the rent reserved; or in the event of the failure of said second party to make any such payment as above set forth, the first party shall have the right to declare this lease at an end and to re-enter and take possession of said demised premises and expel said second party therefrom without in any wise being a trespasser in so doing, and the failure of the said first party at any time thus to re-enter and take such possession shall not be construed as a waiver of his right, or to estop him at any time thereafter from so doing, the cause of forfeiture then continuing, or upon any recurrence thereof.

Said demised premises shall be used and occupied as (here insert purpose) and for no other purpose whatsoever; and said second party shall exercise reasonable care in the preservation of said demised premises.

At the expiration of this lease, whether by the expiration of the full term thereof or by reason of the forfeiture by the second party, under the stipulations therein contained, said second party shall surrender to said first party said premises peaceably and in good order, natural wear and tear and the act of God excepted; and the occupation of said premises thereafter shall give the second party no rights as a tenant.

It is further agreed as a consideration of this lease that the



first party does hereby give and grant unto the said second party, at, or at any time prior to the termination hereof by lapse of time or forfeiture thereof, the right and option to purchase said demised premises upon the following terms, to wit: To pay to said first party such sum as added to the payments theretofore made, less such payments as shall have been made for taxes, assessments and insurance, whether made by the first party or second party, and if paid by the first party with interest thereon at — per cent., as equals the sum of — dollars, together with such additional sum as would equal interest at the rate of six per cent. per annum upon the monthly payments, from the date hereof, until the same shall have been paid. Such payments having thus been made, the first party shall execute and deliver to said second party his warranty deed for said premises, upon the payment to him by said second party, in cash, the further sum of — dollars: provided, that said second party shall have the right to divide said last sum into five equal annual payments, and to secure the payment thereof by his promissory notes therefor, due respectively on or before one, two, three, etc., years from said date; said notes to be negotiable and payable to the first party's order at some bank in the city of —, to bear interest at the rate of — per cent. per annum and attorney's fees, without relief from valuation or appraisal laws; and to be secured by mortgage upon said demised premises.

Unless and until the second party shall exercise the option hereby granted him to purchase said demised premises, and make the payments and execute the note and mortgage requisite to the exercise thereof, his only estate in said premises shall be that of tenant thereof. Said second party shall not sublet said premises nor assign this lease and condition to purchase without the first party's written consent, first had and obtained and indorsed hereon.

In witness, etc.

**5452. Agreement for conditional sale of machinery by means of lease.**

(Signatures of both parties.)

Agreement made the — day of —, 19—, between — of

—, manufacturer, and — of —, mill owner, witnesseth as follows:

In consideration of the payments hereby reserved, and of the performance of the conditions and stipulations hereinafter contained, and on the part of the said mill owner to be performed, the said manufacturer will, on or before the — day of — next, erect and place in the mill of the said mill owner, situated at —, in the county of —, the steam engines, machinery, apparatus and plant particularly described in the schedule hereto annexed, and hereafter called the said machinery.

The said mill owner shall hold and be at liberty to use the said machinery for the term of — years from the said — day of — next, at the rent of — dollars per annum, payable half-yearly on the day of —, and the — day of —, in each year during the continuance of the said term, such payments making in the aggregate the sum of — dollars (price of the machinery), the first of such payments to be made in advance on the said — day of — next.

The said mill owner shall, at his own expense, from time to time, replace and repair all such parts of the said machinery as may be broken, worn out or damaged, and keep the same in every respect in good working order; and he will not, during the said term, remove any part of the said machinery from the building where the same may be erected without the written consent of the said manufacturer, and will not assign, transfer, underlet or part with the possession of the same either directly or indirectly.

The said mill owner will punctually pay the rents hereby reserved, and perform all the conditions and stipulations herein contained, and on his part to be performed; and will not do or suffer anything whereby the said machinery or any part thereof shall or may be seized, taken in execution, attached, removed, destroyed or injured; he shall keep said machinery insured against damage or loss by fire in some office to be approved by the said manufacturer, for at least — dollars, and will pay the premiums for such insurance, and will forthwith deliver to the said manufacturer the policies of such insurance, and the receipts for the premiums which shall become payable therefor.

The property in said machinery shall remain in the said manufacturer to all intents and purposes: provided, that the said machinery shall become the absolute property of the said mill owner on the expiration of the said term, and payment of all the rent hereby covenanted to be paid, and all costs, charges and expenses provided for under this agreement.

In case of the bankruptcy of the said mill owner, or in case he shall assign, transfer or mortgage any part of said machinery, or make default in performing and observing any of the covenants, conditions or agreements herein contained, the said aggregate sum of — dollars shall become immediately payable to the said manufacturer, and he may at his option enter said premises, and every building in which any part of the said machinery may be, and take possession of and remove the said machinery, and may, without the consent of the said mill owner, sell the same as freely as if this agreement had not been made and retain amount due, paying surplus to mill owner.

In witness, etc.

#### 5453. Conditional contract and note.

\$ —. —, —, —, 19—.

I, —, promise to pay to — company or order, — dollars, at their office in —, —, in five instalments, namely: — dollars on the — day of —, 19—; — dollars on the — day of —, 19—; — dollars on the — day of —, 19—; — dollars on the — day of —, 19—, and — dollars on the — day of —, 19—, being the price of one —, and I agree that on default of payment of any of said instalments when due, the full balance of this note remaining unpaid shall thereupon mature and become immediately due and collectible, without further notice or demand. This note to bear interest from date at the rate of — per cent per annum. But said sale is conditional, and the title to said property remains in said — company until this note and costs are fully paid. And in default of payment of said note, or any part thereof, said property is to be returned to said — company, on demand. If said property or any part thereof be lost, damaged or destroyed before payment in full of the purchase-money, the vendee or

vendees herein shall in no event be entitled to a rescission of the contract or abatement in the price. If this note be placed in the hands of an attorney for collection, the subscriber hereby agrees and promises to pay — per cent. attorney's fees on principal and interest due on same. Each of us, whether principal, security, guarantor, indorser or other party hereto, hereby severally waives and renounces each for himself and family, any and all homestead or exemption rights, and any and all exemption of daily, weekly, monthly or yearly wages, or salary of each of us, from the process of garnishment, which either of us, or the family of either of us, may have under or by virtue of the constitution or laws of this state, or of any state of the United States as against this debt or any renewal thereof, and each further waives demand, protest and notice of demand, protest and non-payment.

Given under the hand and seal of each party.

1. See **BILLS AND NOTES.**

**5454. Conditional contract in the form of a note.**

\$ ——. ———, ———, ———, 19—.

For value received I, the subscriber, of ———, ———, promise to pay to the order of ———, of ———, ———, ——— dollars at his office in said city, as follows: ——— dollars cash on signing this order; ——— dollars on delivery of the property, and the balance, ——— dollars per week with legal interest on each of said sums.

The consideration for the payment of the above-named amount is the agreement by said ——— to sell and deliver to the subscriber at ———, ———, one ——— machine, the use of which is let to the subscriber and this agreement is made upon the following conditions, namely:

The said ——— machine shall remain the property of said ——— until each and every one of said amounts and interest thereon and any judgment rendered thereon shall be paid in full, and in case the subscriber makes default in payment of said amounts or any of them or interest thereon at the time and place above specified, or shall sell, assign or remove, or attempt to encumber, dispose of or remove said ——— machine from the place above

mentioned without the written consent of said —, his agents or assigns; or if said —, his agents or assigns shall feel insecure or unsafe, the subscriber shall on demand deliver the property in as good condition as when received, reasonable use or wear excepted, or said — or his agents or assigns shall have the right without notice or demand to take immediate possession of said property and for that purpose may pursue the same wherever it may be found, and may enter my premises with or without force or process of law, or wherever the said — machine may be, or be supposed to be, and search for same and if found to take possession thereof, and in case said —, his agents or assigns shall retake possession of said property, all moneys paid on the purchase-price thereof shall belong to said — or his assigns as liquidated damages for nonfulfilment of this contract by the subscriber and for loss in value of said property and for the use and rental thereof while remaining in possession of the subscriber; or should default be made in making any of the said payments as above specified, and should the same remain in arrears and unpaid for a period of ten days, or should any condition, stipulation or agreement herein contained be violated or not kept by me, then in such case the whole sum remaining unpaid on this agreement shall, at the option of said — or his assigns, without notice, become immediately due and payable and said — or his assigns may at their option, whether they have or have not retaken possession of said property, enforce the payment and collection of the balance remaining unpaid on this agreement and interest thereon.

In case of the payment of each and every one of said amounts and interest thereon or payment of judgment obtained thereon, the full and absolute title to said property shall pass and vest in the subscriber hereto, it being, however, expressly understood that title shall not pass to the subscriber until any and all judgments obtained hereon are paid and satisfied in full. This agreement shall not be binding on said — until accepted and approved by him. This contract has been signed in duplicate and

a copy thereof delivered to the subscriber, the receipt of which is hereby acknowledged.

Accepted,

1. See **BILLS AND NOTES.**

**5455. Contract to convey realty on payment of part of purchase-price.**

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That in consideration of the sum of — dollars to be paid at the time or times and in the manner hereinafter provided, said first party hereby agrees to sell and convey by good and sufficient warranty deed, free and clear of any and all encumbrances, to said second party, heirs or assigns, the following described real estate situated in the county of —, state of —, to wit: (here describe real estate); and the said second party hereby agrees to pay said first party in the following manner: — dollars cash upon the execution of this contract; — dollars on the — day of — next; — dollars on the — day of —, etc., with interest on each instalment from the date of this contract at the rate of — per cent. per annum, until the same is paid.

Said party of the second part also agrees to pay all taxes and assessments that shall be taxed or assessed on or against said real estate from the date hereof until the said purchase-price be fully paid as aforesaid.

It is mutually agreed between said parties that said second party shall have possession of said real estate on the — day of —, 19—, and shall keep the same in as good condition as it is in at the date hereof, natural wear and tear excepted, until said sum shall be paid as aforesaid.

Until the completion of the purchase on or before the — day of —, 19—, or until a deed of conveyance of said real estate be made by first party to second party as hereinafter provided, the said second party shall hold the said real estate as ten-

ant to the vendor at the yearly rent of — dollars, payable semiannually on the — day of — and the — day of — in each year, the first of such payments to be made on the — day of —, 19—. In case the rent paid in any year shall exceed — per cent. per annum upon the amount of the purchase-money which shall in any such year for the time being remain unpaid, such excess shall go and be applied in reduction pro tanto of the principal of such purchase-money.

If said second party shall fail to perform this contract, or any part of the same, said party of the first part shall, immediately after such failure, have a right to declare the same void, and retain whatever may have been paid on said contract, and all improvements that may have been made on said real estate, and may consider and treat the party of the second part as his tenant holding over without permission, and may take immediate possession of the premises, and remove the party of the second part therefrom.

It is further agreed by the party of the first part that in case second party promptly pays said instalments when due as aforesaid until he has paid the full — part of the entire purchase-price aforementioned, and also in case he has performed all the other stipulations and agreements on his part to be performed, said first party shall at his own cost and expense execute and deliver to said party of the second part, his heirs or assigns a good and sufficient deed of said premises with full covenants of warranty; whereupon second party, in consideration for said deed, agrees to execute and deliver to first party a first mortgage for the balance of said purchase-price remaining unpaid, and which said balance covered by said mortgage shall be due and payable, according to the terms of said mortgage, on the — day of —, 19—, and with interest at the rate of — per cent. per annum from the date of said mortgage.

It is further mutually agreed between the parties hereto that upon the due execution of said deed of conveyance and mortgage as aforesaid and the performance of all and singular the stipulations and conditions herein mentioned, this contract is to be and will become null and void. And it is agreed that

the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In witness, etc.

**5456. Conditional contract for sale of typewriter.**

\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, 19—.

— Typewriter Co.,

\_\_\_\_\_, \_\_\_\_\_.

Please express to me as soon as possible one No. 5 — typewriter, specifications as per your catalogue.

On fulfilment of the above the undersigned agrees to pay you the sum of — dollars (\$—) as follows: — dollars (\$—) cash on arrival; balance by monthly payments of — dollars (\$—) each from date of invoice.

Upon delivery of typewriter I agree to pay sight draft for — dollars (\$—) and to execute and deliver to you nineteen notes, for — dollars (\$—) each, to cover the balance, said notes to bear date of invoice and one to be payable each month thereafter until all are paid. Should there be any failure to pay such draft on presentation or to execute and pay any note or notes for deferred payments as provided herein, it is agreed that the full amount covered by this contract shall at once become due and payable. It is especially agreed that this order shall not be countermanded and it is further agreed that the title to said typewriter shall not pass until the purchase-price thereof or any judgment for the same is paid in full but that said typewriter shall remain your property until that time.

In default of any payment you or your agents may take possession of and remove said typewriter without legal process, and in such case all payments heretofore made by me under this contract shall be deemed and considered as having been made for the use of said typewriter during the time the same remained in my possession and shall be retained and kept by your said company as such payment.

The signing and delivery of said promissory notes shall not be deemed nor considered a payment nor a waiver of any term, provision or condition of this contract.



It is agreed that the purchaser of said typewriter shall not remove same from the city of —, —, without first having obtained the written consent of said — typewriter company, nor use said typewriter so as to injure it or impair its use, other than may result from ordinary wear. This typewriter is not placed on trial or approval, and no agent is authorized to make or bind the said — typewriter company by any agreement, statement or representation of any kind other than contained in this contract.

This contract covers all agreements between the parties hereto and receipt of duplicate is hereby acknowledged.

\_\_\_\_\_, \_\_\_\_\_.  
Witness.

**5457. Conditional contract for sale of safe.**

\_\_\_\_\_, \_\_\_\_\_,  
\_\_\_\_\_, 19—.

To — Manufacturing Co.,

\_\_\_\_\_, \_\_\_\_\_.

Please send me at once one No. — fire-proof safe, approximate size inside, 25 inches high, 15 inches wide and 11 inches deep, as per your illustrated catalogue. Necessary alterations allowed. Ship via —, and rent same to undersigned on following terms: Safe to be delivered F. O. B. cars at —, —, and the rental thereof to be \$—, payable \$— in cash on arrival of safe and the balance in three equal instalments of \$— each at two, four and six months from date of invoice, these deferred payments to be evidenced by rental notes bearing interest at the rate of — per cent. from invoice date, which shall also be the date of said notes.

Said rental notes are to be sent you as soon as invoice for safe is received and if they have not been forwarded at the expiration of twenty-five days from date of invoice, the entire rental of said safe as above set forth shall become due and payable, and I agree to accept and pay your draft for said amount on presentation.

When the full amount of \$— with interest as provided is paid, you are to give me a bill of sale for said safe, and same is to become my property, but it is agreed that the title to said safe

shall not pass until said payments have been made in full, but shall remain with you, and on default of payment of said rent, or any part thereof, you or your agent may take possession of and remove said safe without legal process and all sums then paid shall be retained by you as rental for said safe while it was in my possession, and all exemptions and all claims for damages are hereby waived.

I agree to notify you of any seizure of said safe or of any bankruptcy or settlement with creditors on my part, and in case the said safe shall be seized it is agreed that all instalments of rent previously paid shall be forfeited. Nothing but shipment, or delivery or actual acceptance in writing shall constitute your acceptance of this contract and the same shall not be countermanded, canceled or annulled by me.

I further state and agree that the foregoing embodies all claims made between us in any way in regard to the said safe and that all claims of verbal or other agreements of any nature not embodied in this contract are hereby waived.

The receipt of a duplicate of this present contract is hereby acknowledged.

Yours truly,

---

#### 5458. Conditional contract for sale of sewing machine.

I, — of —, state of —, have this day received of — company of —, state of —, the following described property: one — sewing-machine, No. —, in drop oak cabinet, under an agreement for the conditional sale thereof, which said agreement and every condition and provision thereof is set forth below and is as follows:

The value of the said sewing-machine is fixed at — dollars (\$—).

I agree to pay the said — company the sum of one dollar (\$1.00) cash on signing this contract, and in consideration of having the possession and use of said property I further agree to pay said — company at their place of business in —, state of —, the further sum of one dollar (\$1.00) weekly, said payments to be made on Saturday of each week until I have paid

the full sum of —— dollars (\$——). When I shall have paid the last-mentioned sum in full and any other sums due by reason of my default as hereinafter provided, I am to have title and ownership to said sewing-machine; said —— company to have full and absolute title and ownership to said sewing-machine until all the payments have been made.

I expressly agree not to remove said sewing-machine from the premises I now occupy without first obtaining the written consent of said —— company and to use said sewing machine at all times while this contract is in force in a careful and prudent manner.

I further expressly agree that when I fail to make any of the payments herein provided for at the time when the same becomes due or if I fail to keep and perform faithfully all and singular the terms and conditions of this agreement, said —— company may, without notice to me, enter my premises where such property is located and take immediate and full possession thereof and upon said —— company obtaining said above-described property in any manner and holding same for —— days, any right that I may or might have in such property or to the possession thereof or to the payments made thereon, shall cease absolutely without a subsequent public sale of said property and without notice of sale or otherwise to me, hereby expressly waiving any action or right of action of any kind whatsoever, which I may have against said —— company growing out of such removal or attempted removal according to the aforesaid agreement, or arising by reason of such repossession and retention of said goods by said —— company without subsequent public sale thereof and notice to me.

I hereby agree to pay any and all charges and expenses, including a reasonable attorney fee incurred in taking possession of said property or in collecting said bill in case of my default.

I hereby expressly and solemnly state that I am 21 years and upwards of age.

In witness whereof, I have hereunto subscribed my name to this agreement and a duplicate hereof, this —— day of ——, 19 —.

---

**5459. Conditional sale of real estate on instalment plan.**

This memorandum of agreement, made this — day of —, 19—, between — of —, state of —, of the first part, and — of —, state of —, of the second part, witnesseth:

The first party, in consideration of — dollars, hereby sells and agrees to sell to the second party the following described real estate: —.

The said second party agrees to pay said purchase-price in instalments as follows: The sum of — dollars on the — day of —, 19—, the sum of — dollars on the — day of —, 19—, and the sum of — dollars on the — day of —, 19—, each instalment to bear interest from the date of this agreement at the rate of — per cent. per annum until paid.

The party of the first part, on receipt of said instalments of the purchase-price, together with interest thereon, agrees to execute to the second party a good and sufficient deed in fee simple with full covenants of warranty, to said real estate, and hereby warrants said deed to convey good and merchantable title free from encumbrances of any and all kinds.

The said second party shall take possession of said real estate on the — day of —, 19—, and shall, so long as he hold possession thereof, or until said purchase-price has been paid, keep said premises in as good condition as they were when he received them.

And it is hereby further agreed by and between said parties of the first and second parts that until the payment in full of said purchase-price, together with interest accrued thereon, the second party shall hold said premises only as the tenant of the first party, at a yearly rental of — dollars, payable on the — day of — of each year, and that if the rent so paid in any year shall exceed the interest due on such purchase-price, the surplus of the rent so paid, after payment of said interest, shall be applied on the principal of said purchase-price.

It is hereby further agreed between said parties that if the second party shall fail in any manner to perform his part of this contract, the first party shall have the right to immediately declare this contract null and void, and take possession of said premises. And in such event the first party shall pay to said

second party the reasonable value of all permanent improvements made upon said premises by said second party, and to account to said second party for all moneys received by him from said second party under this contract over and above the said rent herein stipulated to be paid.

And it is further agreed that the provisions of this contract shall be binding upon the heirs, assigns and legal representatives of the said parties thereto.

In witness whereof, etc.

\_\_\_\_\_  
\_\_\_\_\_

#### 5460. Conditional sale of an automobile.

Thirty days after date I promise to pay to the order of —, two hundred dollars, for value received, negotiable and payable at — Bank without defalcation or discount, and with interest from maturity until paid at the rate of eight per cent. per annum. This note is given for agreed purchase-price of the following property, to wit: one model — touring car. And it is expressly agreed that the title to and ownership of and to said property shall not pass out of the said payees, but shall be and remain in them until the said sum, with interest and costs, shall be fully paid, and this note is not intended as a sale, but nothing more than an agreement to sell on the payment of the sum and interest as aforesaid. In case of default of payment said payee or his assigns may repossess himself of said property, and all partial payments shall be appropriated as rent of said property. If not paid at maturity this note, together with all other notes given for this purchase, shall become due and payable at the bank above named at once. It is well understood that in case of loss or damage to said property while in my hands, or before the payment of this note, said loss shall be mine, and not that of the payee. The makers and indorsers of this note severally waive protest and notice thereof, and diligence in collection.

1. *Watkins v. Curry* (Ark.), 147 S. W. 43.

**BOARD, LODGING AND SUPPORT CONTRACTS.****5465. Agreement to support parents.**

This agreement, made this — day of —, 19—, between — and —, hereinafter called the son, and — of —, hereinafter called the parents, witnesseth:

In consideration of the payment by said parents to said son, after his majority, of various sums of money more particularly described as follows: (here insert description of sums); and in consideration of the transfer by said parents to said son of that certain piece of real estate described as follows, to wit: (here insert description of real estate); and in further consideration of the love and affection which said son bears toward said parents.

Now, therefore, said son hereby agrees to provide a home for said parents during their natural lives. Said home shall consist of a house and lot not to exceed in cost — thousand dollars, the same to be furnished by said son with all things to which said parents were accustomed prior to this time, in their ordinary housekeeping; and it shall be the duty of said son to keep said house in repair and in a suitable and comfortable condition.

Said son shall provide said parents with a horse and buggy, stable room for said horse, and shall pay for his keep during the lifetime of said parents or for such time as they may desire to use a horse and buggy.

It is further agreed and understood that said son shall furnish said parents with all necessary food and provisions, the same to be purchased wherever said parents may choose; and the bills for the same to be rendered to said son. But at no time shall said bills exceed — dollars per month. Said son shall also provide light and heat such as may be necessary to produce reasonable comfort in the house heretofore described.

It shall be the duty of said son at all times during the lifetime of said parents, or either of them, to furnish a physician or nurse and such medicines as may be necessary for said parents, or either of them, in case of sickness. And after the death of one of said

parents, said son shall provide a companion for said other parent.

It is also mutually agreed that said son shall carry out the provisions of this contract until the death of said parents, whereupon he shall provide them with decent burial and erect a tombstone for each at a cost not to exceed — dollars. If said son shall become deceased before the death of said parents, or either of them, said piece of real estate shall vest in —, trustee, for the purpose of carrying out the terms of this agreement.

In witness, etc.

**5466. Contract between husband and wife for support of children.**

This agreement made this — day of —, 19—, between — of —, hereinafter called the husband, and — of —, hereinafter called the wife, witnesseth:

Whereas, unfortunate differences and disputes have arisen between the parties hereto and they have separated with the intent to live apart from each other during the remainder of their natural lives;

And whereas, the said husband has this day paid to — as trustee, with directions that he shall transfer the same to said wife, the sum of — dollars, the receipt of which is hereby acknowledged, and has assigned, conveyed and transferred to said trustee that certain piece of property described as follows: (here insert description of said property) on condition that said trustee shall transfer the same to said wife;

Now, therefore, in consideration of the premises, the said wife hereby releases the husband from all obligations of future support, and she releases and relinquishes unto said husband, his heirs, executors, administrators and assigns all rights or claims by way of inheritance or descent in and to the real property of the said husband now owned or hereafter acquired and all other rights of whatsoever kind and nature growing out of said marriage relation. Said wife also agrees that she will not incur or contract any debts on his credit, and that in case an action for divorce shall be instituted for either of the parties hereto, she will not ask for alimony or for counsel fees.

It is also agreed that said wife shall have the sole and exclusive custody, care and control of the children of the parties hereto,

to wit: (here name the children) during their minority. Said husband on his part agrees to pay to said wife for the care, support and education of said children the sum of —— dollars per year for each child, payable in equal quarterly payments, of —— dollars each, on the —— day of January, April, July and October of each year, during their minority. Payments for the support of each child, however, shall cease when such child reaches the age of majority.

Said husband, on his part, for the consideration herein named, does hereby release and relinquish to the said wife, her heirs, executors, administrators and assigns, all rights or claims of curtesy, inheritance, descent, distribution and all other rights or claims growing out of the marriage relation between said party; and said husband shall be forever barred from all rights in the estate of said wife, real, personal or mixed, now owned or hereafter acquired.

In witness, etc.



**BOARD OF TRADE CONTRACTS.****5470. Contract for purchase of wheat.**

This agreement made and entered into this — day of —, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the said first party, in consideration of — bushels of wheat sold to him this day by said second party, and by him agreed to be delivered to said first party, free of charges and expenses whatsoever, at —, on or before the — day of — next, shall and will pay or cause to be paid, to said second party, or his assigns, within — months after such delivery, the sum of — dollars. And the said second party, in consideration of the aforesaid agreement on the part of said first party, doth promise and agree, on or before — aforesaid, at his own expense, to deliver to said first party, or his assigns, the said — bushels of wheat so sold him as aforesaid, and that he, the said second party shall and will warrant the same to be good, clean and merchantable grain.

In witness whereof, the parties hereto have set their hands and seals this day and year above written, at — M. of said day.

**5471. A put.**

For value received the bearer is authorized and empowered to deliver — shares of the — stock of the — company, at — per cent., on or before the — day of —, 19—.

All dividends for which transfer-books close during the above-mentioned time go with the stock; one day's notice required, except last day.

Expires on the — day of —, 19—, at — M.

**5472. A call.**

For value received the bearer is authorized and empowered to call on — for — shares of the — stock of the — company, at — per cent., on or before the — day of —, 19—.

All dividends for which transfer-books close during the above-

mentioned time go with the stock; one day's notice to be given, except the last day.

Expires on the — day of —, 19—, at — M.

1. See § 1008; also, *Treat v. White*, 181 U. S. 264, 45 L. ed. 853.

### 5473. A spread.

For value received, the bearer is hereby authorized and empowered to call on the undersigned for — shares of the — stock of the — company at — per cent., on or before the — day of —, 19—.

Or, the bearer may, at his own option, deliver the same to the undersigned at — per cent., on or before the date above mentioned.

All dividends or extra dividends declared during the time above mentioned are to go with the stock in either case, and this instrument is to be surrendered upon the stock being either called or delivered.

Expires —, 19—, at — M.

1. See, as to validity and effect "spread" or "straddle", *Harris v. Tumbridge*, 83 N. Y. 92, 38 Am. Rep. 398.

## BONDS.

## COMMERCIAL AND MUNICIPAL BONDS.

## 5475. General form.

\$——. Consolidated Loan, —— Series. \$——.

United States of America, State of ——.

The City of ——.

Know all men by these presents that the city of —— is indebted and is hereby held and firmly bound unto —— or bearer in the sum of —— dollars, lawful money of the United States, payable —— years from the date hereof, at the First National Bank of ——, in the city of ——, with interest thereon at the rate of —— per cent. per annum from the —— day of ——, 19——, payable semiannually at said bank on the first day of January and July of each year, on presentation of the proper coupons hereunto attached.

Said bond is part of a loan authorized by virtue of an act of the legislature, entitled (here insert title of act), passed and approved the —— day of ——, and an ordinance of the council of said city of ——, passed and approved the —— day of ——, to provide for the funding of the indebtedness of said city.

In witness whereof and in pursuance of said ordinance, the mayor of said city has signed this bond and caused the seal of said city, duly attested by the clerk of said city, to be affixed hereunto this —— day of ——, 19——.

\_\_\_\_\_,  
Mayor.

\_\_\_\_\_,  
Clerk.

## INTEREST COUPON

No. ——.

The city of —— will pay the holder hereof, on the —— day of ——, 19——, at the First National Bank of ——, —— dollars, for interest due on bond No. ——.

1. See ante, vol. 4, ch. 93.

**5476. Municipal bond—City hall.**

United States of America, State of —.

City of —.

\$—, City Hall Loan, \$—, No. —.

Know all men by these presents that the inhabitants of the city of — acknowledge themselves indebted to —, or bearer, in the sum of — dollars, to be paid at the office of the city treasurer in said city, on the — day of —, 19—, with interest thereon at the rate of 6 per cent. per annum from date, payable semiannually, at the office aforesaid, on the first days of January and July in each year, on the presentation and delivery of the coupons hereunto attached, as they severally become due.

This bond is part of the City Hall Loan created by virtue of an ordinance of the common council of said city, entitled "An ordinance to authorize the issue of bonds for the purpose of building and erecting a city hall in the city of —," passed and approved the — day of —, 19—.

In witness whereof, the people of said city have caused this bond to be sealed with their common seal, signed by the mayor and attested by the treasurer, this — day of —, 19—.

**INTEREST COUPON**

City of —.

City Hall Loan.

The city of — will pay to the bearer hereof — dollars at the office of the treasurer of said city, the — day of —, 19—, for six months' interest on bond No. —.

\_\_\_\_\_,  
Treasurer.

1. See ante, vol. 4, ch. 93.

**5477. City bond for general purposes.**

No. —.

\$100.

STATE OF —,

CITY OF —.

Bonds for General Purposes, \$20,000.

Twenty years after date, for value received, the City of — promises to pay bearer one hundred dollars with interest at the

rate of six per cent. per annum from date, payable semiannually, on the first days of September and March of each year, upon presentation of the proper coupon hereto annexed, both principal and interest payable at the office of the treasurer of the city of ——. This bond is redeemable by the city of — after the expiration of ten years from date hereof. This bond is authorized by an ordinance of the city of —, approved —, 19—.

In witness whereof, the mayor and secretary of the city of — hereunto set their hands and affix the seal of the city of —, this — day of —, 19—.

\_\_\_\_\_,  
Mayor.

\_\_\_\_\_,  
City Secretary.

## COUPON

\$3.00. City of —. Coupon No. 1.

The city of —, state of —, will pay to bearer three dollars on the first day of September, 19—, at the office of the treasurer of the city of —, state of —, being semiannual interest on bond No. —.

\_\_\_\_\_,  
Mayor.

\_\_\_\_\_,  
City Secretary.

1. City of Brenham v. German American Bank, 144 U. S. 173, 36 L. Ed. 390.

## 5478. Gravel road bond.

No. —. \$—.

UNITED STATES OF AMERICA, }  
STATE OF —, } ss.  
COUNTY OF —.

## Gravel Road Six Per Cent. Coupon Bond.

Three years after date, the county of —, in the state of —, will pay to bearer — dollars, lawful money of the United

States, with interest thereon at the rate of — per cent., payable semiannually at the office of the banking house of —, —, —. The interest to be paid on the — day of — and the — day of — of each year, on the presentation and surrender of the annexed interest coupons as they shall severally become due. This bond is one of a series of — bonds of even date, made for the purpose of building a free gravel road in said county, known as the — free gravel road, pursuant to an order of the board of commissioners of said county of — and state of —, on the — day of —, 19— (see record —, at page —), and pursuant to an act approved —, 19—, in relation to free gravel roads (see Acts —, p. —, and the acts amendatory thereof and supplementary thereto).

In witness whereof, we have hereunto set our hands and have caused the seal of said county to be attached, at the town of —, in said county and state, this — day of —, 19—.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_

Commissioners of — Co., —.

STATE OF —, }  
COUNTY OF —, } ss.

I, —, county auditor, do hereby certify that the annexed bond was issued to the county treasurer this — day of —, 19—.

In testimony whereof, I have hereunto set my hand and affixed the seal of said board of county commissioners this — day of —, 19—.

\_\_\_\_\_,  
Auditor — County, —.

#### COUPON

No. —. \$—.

The county of —, in the state of —, will pay to the bearer on the — day of —, 19—, at the office of the banking house of —, in the city of —, —, — dollars, on presentation and surrender of this coupon, being — month's interest due

at that date on bond No. — of the bonds issued for the purpose of building the — free gravel road.

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_

Commissioners.

### 5479. Village bond.

No. —.

\$1,000.00.

UNITED STATES OF AMERICA, }  
STATE OF —, } ss.  
VILLAGE OF —.

### Improvement Bond.

Know all men by these presents, that the village of —, in the state of —, for value received, promises to pay bearer one thousand dollars lawful money of the United States, on the — day of —, 19—, at the First National Bank, in the city of —, with interest at the rate of six per cent. per annum payable semiannually, on the first days of January and July in each year, on the surrender of the annexed coupons as they severally become due. This bond is issued under and by authority of a special act of the legislature of the state of —, entitled "An act to authorize the village of — to raise money to make public improvements in the village of —, being No. — of the Local Acts of 19—, of the legislature of the state of —; approved —, 19—, and also under the ordinance of the village of —, passed —, 19—.

In testimony whereof, the said village of — has caused these presents to be signed by the president and recorder of said village, and to be sealed with the seal of said village, this —, day of —, 19—.

(Seal.)

\_\_\_\_\_,  
President.  
\_\_\_\_\_,  
Recorder.

1. *Risley v. Village of Howell*, 64 Fed. 453.
2. See also, ante, vol. 4, ch. 93.

**5480. School bond.**

No. —.

\$1,000.00

STATE OF —,	}	ss.
CITY OF —.		

**School Bond.**

Know all men by these presents, that the city of —, state of —, for value received, is indebted to the bearer in the sum of one thousand dollars, which it promises to pay on the — day of —, 19—, at the National Park Bank, in the city of New York, with interest at the rate of six per cent. per annum, payable semiannually, on the 1st day of January and on the 1st day of July of each year upon presentation at the said National Park Bank of the interest coupons hereto attached as they mature; the last instalment of interest payable with this bond. This bond is issued under and by virtue of an act of the legislature of the state of —, entitled "An Act to Organize Cities of the Second Class, Approved —, 19—," and is secured by pledge of the school fund and property of the city of — for the payment of the principal and interest thereof, as the same may become due.

Dated at —, this first day of —, 19—.

Signed, —,

President of the Board of Education.

Countersigned, —,

Treasurer.

1. Board of Education v. DeKay, 148 U. S. 591, 37 L. Ed. 573.

**5481. County bond.**

No. —.

United States of America.

\$1,000.00

State of —, County of —, finding bond, issued under the Act of 19—, as amended —, 19—.

Twenty years after date, for value received, the county of — promises to pay to bearer hereof the sum of one thousand dollars in lawful money of the United States, at the office of the treasurer of the state of —, in the city of —, with interest at the rate of six per cent. per annum, payable annually, as shown by and upon the surrender of the annexed coupons, as they severally become due, reserving, however, the right to redeem this bond at any time after five years from date.



This date is one of a series of — of like tenor, issued for the purpose of funding and retiring certain binding, subsisting legal obligations of said county, which remain outstanding and unpaid, under the provisions of an act of the general assembly of the state of —, entitled "An Act to enable counties, cities, towns, townships, school districts and other municipal corporations to fund, retire and purchase their outstanding bonds and other evidences of indebtedness in the office of the auditor of public accounts," approved —, 19—, and acts amendatory thereto, approved —, 19—, and in pursuance of a vote of a majority of the legal voters of said county, voting at an election legally called, under said act, the — of —, 19—.

We hereby certify that all requirements of said acts have been fully complied with in the issue thereof.

In testimony whereof, we, the undersigned officers of said county, being duly authorized to execute this obligation of its behalf, have hereunto set our signatures this 1st day of —, 19—.

\_\_\_\_\_,  
Chairman of County Board.

\_\_\_\_\_,  
County Clerk.

(Seal.)

1. *Graves v. County of Saline*, 161 U. S 359, 40 L. Ed. 732.

#### 5482. County bond to railroad company.

Know all men by these presents that there is due from the county of — to the Central Division of — railroad company, or bearer, five hundred dollars lawful money of the United States, with interest at the rate of — per cent. per annum, payable annually on the — day of — in each year, at the treasurer's office of said county on the presentation and surrender of the annexed coupons, the principal to be due and payable ten years from the date thereof.

For the performance of all of which the faith of said county is irrevocably pledged, as also the property, revenue and resources of said county of —.

In testimony whereof, —, clerk of the county court, has

hereto subscribed his name and affixed the common seal of said county clerk this — day of —, 19—.

(Seal.)

\_\_\_\_\_,  
Clerk of County Court.

Bond No. —.

The county of — will pay — dollars on its coupons on the — day of —, 19—.

\_\_\_\_\_,  
Clerk of County Court.

### 5483. Township bond.

Be it known that — township in the county of — and state of — is indebted to the — railroad company, or bearer in the sum of — dollars lawful money of the United States, with interest at the rate of — per cent. per annum, payable annually, on the — day of — in each year, at the banking-house of — in the city of — on the presentation and surrender of the respective interest coupons hereto annexed.

The principal of this bond shall be due and payable on the — day of —, 19—, at the banking-house — in the city of —. This bond is issued for the purpose of subscribing to the capital stock of — railroad company, and for the construction of the same through said township in pursuance and in accordance with the act of the legislature of the state of —, entitled "An Act to enable municipal townships to subscribe for stock in any railroad company, and to provide for the payment of the same, approved —, 19—." And for payment of said sum of money and securing interest therein, in the manner aforesaid, upon the performance of the said condition, the faith of the aforesaid — township and also its property, revenue and resources is pledged.

In testimony whereof, this bond has been signed by the chairman of the board of county commissioners of — county, state of —, and attested by the clerk of said county this — day of —, 19—.

Attested: \_\_\_\_\_,  
Chairman of County Commissioners.  
\_\_\_\_\_, County clerk.

**5484. Parish bond.**

\$100.

No. \_\_\_\_.

STATE OF \_\_\_\_,

July \_\_\_\_, 19\_\_.

The parish of \_\_\_\_ will pay to bearer, six years after date or sooner, at the pleasure of said parish, one hundred dollars, with six per cent. interest thereon, payable annually at the office of the parish treasurer, as per coupons attached. This obligation is issued to fund the debt of the parish, in accordance with an ordinance passed by the police jury on the \_\_\_\_ day of \_\_\_\_, 19\_\_.

\_\_\_\_\_,

\_\_\_\_\_,  
President Police Jury.

Clerk Police Jury.

**5485. Bond for payment of sum of money with interest.**

This bond, made the \_\_\_\_ day of \_\_\_\_, in the year \_\_\_\_, between \_\_\_\_ of \_\_\_\_, of the first part, and \_\_\_\_ of \_\_\_\_, of the second part, witnesseth that the first party, being indebted unto the second party in the sum of \_\_\_\_ dollars, hereby binds himself to pay the same to the said second party or to his order (or to the bearer), in \_\_\_\_ years from the date hereof, with interest at the rate of \_\_\_\_ per cent. a year, payable half-yearly on the \_\_\_\_ day of \_\_\_\_ and the \_\_\_\_ day of \_\_\_\_.

Witness the hand and seal of the first party.

1. No particular form of words is necessary to constitute a bond. It is only necessary to use words acknowledging a debt, and providing that the obligation shall be void upon performance of the condition named; but no writing is a bond unless executed under seal, according to the common law. Statutes have frequently changed this. See ante, vol. 4, chaps. 90-95.

2. This instrument is a bond only in name, for it has no condition. It is merely an agreement under seal. It is called a single bond in distinction from a double or conditional bond, which is the usual form. See ante, vol. 4, § 3493.

3. See also, Bills and Notes; Indemnity Contracts.

**5486. Bond for payment of money by instalments with provision making whole principal sum due upon any default.**

Know all men, etc.

The condition of the above-written bond is such that if the above-bounden (obligor), his heirs, executors or administrators shall pay or cause to be paid to the above-named (obligee), his

executors, administrators or assigns, the sum of — dollars, by five equal yearly payments on the — day of — in every year, the first of such payments to be made on the — day of — next, and shall also, in the meantime, and until the whole of the said sum of — dollars shall be paid off in manner afore-said, pay or cause to be paid to the said (obligee), his executors, administrators or assigns interest for the same sum of — dollars, or for so much thereof as shall for the time being remain due and unpaid, at the rate of — per cent. per annum, to be computed from the date of the above-written bond, by half-yearly payments, on the — day of — and the — day of — in every year, the first of such payments of interest to be made on the — day of — next; but provided, nevertheless, that in case default shall be made in the payment of any of the said respective sums of principal or interest, or any part thereof, respectively, within — days after the day or time hereinbefore mentioned and appointed for payment thereof, respectively, then and in any such case the whole of the said principal sum of — dollars, or so much thereof as shall then remain due and unpaid, together with the interest which shall have become due thereon, shall forthwith after such default become payable to the said (obligee), his executors, administrators or assigns, and be recoverable by virtue of the above-written bond; then the above-written obligation shall be void, otherwise the same shall remain in full force.

In witness, etc.

## GUARANTY, FIDELITY AND INDEMNITY BONDS.

### 5487. Contractor's bond.

Know all men by these presents, that we, —, of the city of —, state of —, contractor, and — of the city of —, state of —, surety, are held and firmly bound to — the city of —, state of —, in the penal sum of — dollars, to be paid to said — or to his executors, administrators or assigns, for which payment well and truly to be made we bind ourselves and each of us, and each of our heirs, executors and administrators and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this the —— day of ——, 19—.

Whereas by certain articles of agreement, bearing even date with the above-written bond or obligation, and made, or expressed to be made, between the above-bounden —— of the one part, and the above-named —— of the other part, he, the said ——, for the considerations therein expressed, hath contracted and agreed with the said —— to erect and build on a piece of ground situated at ——, certain houses, etc. (describe buildings), in such manner and form, and at or within such time, as in the said articles of agreement and in a specification thereto annexed, and the certain plans, elevations and sections in the said specifications and articles referred to, as are particularly mentioned and set forth; and,

Whereas on the treaty for the said contract it was agreed that the said ——, contractor, and ——, surety, should enter into the above-written bond or obligation, as an additional security to the said —— for the due performance of the said articles of agreement, and of all and every covenant, matter and thing therein contained, on the part and behalf of the said ——, his executors or administrators, to be done and performed :

Now, the condition of the above-written bond or obligation is such that, if the above-bounden, ——, his executors and administrators, do and shall erect and build, complete and finish the said (describe building), in and by the said articles of agreement contracted to be erected and built, at and within the time therein expressed for completing the same, and also do and shall well and truly observe, perform, fulfil and keep all and every the covenants, contracts, clauses, articles and agreements contained in the said articles of agreement, and which, by or on the part of the said ——, his executors or administrators, are or ought to be observed, performed, fulfilled and kept, within such time and in such manner, in all respects, as in the said articles of agreement are mentioned or required, according to the true intent and meaning of the said articles of agreement, and according to the aforesaid specification, plans, elevation, sections and drawings therein referred to, then the above-written bond or

obligation shall be void and of no effect, but otherwise shall be and remain in full force and effect.

\_\_\_\_\_. (Seal.)

\_\_\_\_\_. (Seal.)

1. See ante, vol. 4, §§ 3542, 3547, 3548.

#### 5488. Indemnity bond to sheriff.

Know all men by these presents: That we, —, — and —, are held and firmly bound unto —, sheriff of the county of —, state of —, in the penal sum of — dollars lawful money of the United States, to be paid to said —, his executors, administrators or successors in office; for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, firmly by these presents.

Sealed with our seals, and dated this — day of —, 19—.

The condition of the above obligation is such, that: Whereas the above-bounden —, did obtain a judgment in the — court of the county of —, state of —, on the — day of —, 19—, against — for — dollars, damages, and cost, whereupon execution has been issued, directed and delivered to said —, sheriff as aforesaid, commanding him, that out of the goods and chattels of the said —, he should cause to be made the damages and costs aforesaid: And whereas certain goods and chattels that appear to belong to the said — are claimed by — of —:

Now, therefore, the condition of this obligation is such, that if the above-bounden, shall well and truly keep and bear harmless, and indemnify the said —, sheriff as aforesaid, and all and every person and persons aiding and assisting him in the premises, of and from all harm, trouble, damages, costs, suits, actions, judgments and executions that shall, or may, at any time arise, come or be brought, against him, them or any of them, as well for the levying and making sale, under and by virtue of such execution, of all or any goods and chattels which he or they shall or may judge to belong to the said —, as for entering any shop, store, building or other premises, for the taking

of any such goods and chattels, then this obligation to be void; otherwise to remain in full force and effect.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

1. See ante, vol. 4, ch. 92.

#### 5489. Bond of auctioneer.

Know all men by these presents:

That we, —— and ——, are held and firmly bound unto the state of ——, in the penal sum of —— dollars, to be paid to said state of ——; for which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this —— day of ——, 19—.

The condition of the above obligation is such, that if the above-bounden ——, shall well and faithfully perform the duties of an auctioneer, in the county of ——, state of ——, and pay, or cause to be paid, the duties that are, or shall be, imposed by law, and that shall accrue on all sales made by him, or under his direction, as such auctioneer; and shall render a true and accurate account of all goods sold or struck off by him, then the above obligation shall be void; else to remain in full force and effect.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

#### 5490. Bond to execute assignment.

Know all men by these presents, that we, —— and ——, are held and firmly bound unto ——, in the sum of —— dollars, to be paid to said ——, his executors, administrators or assigns, for which payment, well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this —— day of ——, 19—.

The condition of the above obligation is such, that if the above-bounden ——, his executors, administrators or assigns, on or

before the — day of —, 19—, shall, upon reasonable notice and request, and at the proper cost and charges of said —, his heirs or assigns, make, execute and deliver, or cause to so be, to the said —, his heirs or assigns, or to such person or persons as he or they shall nominate and appoint, and to uses as he or they shall direct, a good and sufficient assignment of all such estate and interest as he, the said —, now hath in the lands and tenements of — at —, then this obligation to be void; otherwise, to remain in full force and effect.

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**5491. Bond that lessee and surety shall pay rent.**

Know all men, etc.

Whereas the said (obligee) leased unto the said (principal obligor) a certain house, and land connected therewith, situate on — street, in the city of —, by indenture of even date herewith, which lease was granted upon the condition that the above-bounden (surety) should join as surety for the said (principal obligor), his executors, administrators and assigns, in a bond for the due payment for the rent reserved by, and the performance of the covenants and conditions contained in, the said lease:

Now the condition of this obligation is such that if the said (principal obligor), or the said (surety), or their respective heirs, executors or administrators, shall, during the continuance hereof, duly pay to the said (obligee), his heirs or assigns, the rent thereby reserved upon the respective days thereby appointed for payment thereof, or within — days next thereafter, and shall, during the continuance hereof, duly observe and perform all the covenants and conditions therein contained, and on the part of the said lessee, his executors, administrators and assigns, to be observed and performed; and so that the lessor's neglect or forbearance in enforcing payment or performance thereof, or his giving of time therefor, shall in no way release the said (obligor), or either of them, his or their heirs, executors or administrators, in respect of his or their liability hereunder; then this obligation shall be void; otherwise it shall be and remain in full force and virtue.

In witness, etc.



**5492. Bond by treasurer of corporation with sureties.**

Know all men by these presents that we, — of —, as principal, and — of —, both of said —, as sureties, are holden and bound unto the —, a corporation duly established under the laws of the state of —, in the sum of — dollars, to the payment of which to the said corporation, its successors or assigns, we hereby jointly and severally bind ourselves, our heirs, executors and administrators.

Whereas the said (principal) has been elected treasurer of the above-named corporation for the period of one year from the — day of —, and whereas the said (principal) may hereafter be re-elected to or continued in such office for a further period:

Now the condition of this obligation is such that if the said (principal) shall at all times hereafter, so long as he shall continue in said office, both during the term for which he has been elected and during such further time as he may continue to hold said office, whether by re-election or otherwise, faithfully, honestly and diligently perform and discharge all the duties of said office, and shall, whenever required, duly and faithfully account to the said corporation, its successors or assigns, for all moneys, goods and property whatsoever, for or with which the said (principal) may be in any wise accountable or chargeable to said corporation, and shall, when required, pay or deliver all such moneys, goods and property to said corporation, its successors and assigns, then this obligation shall be void; or otherwise the same shall remain in full force and effect.

In witness, etc.

1. Clauses providing that giving time shall not affect liability of sureties, and providing for limitation of the liability of the sureties, may be added:

Provided that any forbearance on the part of said corporation, its successors or assigns, toward the said (principal) in respect of his failure or neglect to perform such services and duties, or to make such payments as aforesaid, shall not in any way release or exonerate the said (sureties), or either of them, their or his heirs, executors or administrators, in respect of their or his liability under the above-written bond.

And provided, also, that each of them, the said (sureties), or his heirs, executors or administrators shall not separately or individually be liable to pay a larger sum than — dollars, by virtue of the above-written bond.

**5493. Bond by a cashier with sureties.**

Know all men, etc.

Whereas the above-named corporation has agreed to take the above-bounden (principal) into its employ as cashier, upon the said (principal) and the above-bounden (sureties) entering into a bond in the above-mentioned sum of — dollars, with such condition as is hereunder written, for the faithful discharge by the said (principal) of his duties as cashier :

Now the condition of the above-written bond is such that, if the said (principal) shall faithfully discharge his duties as such cashier as aforesaid, or if the said (principal) and (sureties) or either of them, their or either of their heirs, executors or administrators, shall at all times hereafter keep indemnified the said corporation and its assigns against all losses, costs, damages and expenses which the said corporation or its assigns may pay, sustain or be put unto by reason of its taking the said (principal) into its employ, of by reason of any act, embezzlement, mismanagement, neglect or default of or by the said (principal) whilst in the employ of the said corporation or otherwise, then, in either of the said cases, the above-written bond shall be void ; otherwise the same shall remain in full force.

In witness, etc.

1. See ante, vol. 4, § 3552.

**5494. Bond for performance of specified agreement.**

Know all men, etc.

The condition of the above-written bond is such that if the above-bounden (obligor), his executors and administrators shall in all things, on his and their parts, observe, perform, fulfil and keep all and singular the clauses, conditions, agreements, matters and things which, on the part of the said (obligor), his executors or administrators, are to be observed, performed, fulfilled and kept, according to an agreement in writing, bearing even date herewith (or dated the — day of —, 19—), and expressed to be made between the said (obligor), of the one part, and the said (obligee), of the other part, then the above-written obligation shall be void, but otherwise shall remain in full force.

1. See ante, vol. 4, § 3515.

**5495. Bond to contribute to support of illegitimate child.**

Know all men by these presents, etc.

Whereas, the said — has made oath before —, a justice of the peace in and for said town of —, that the above — is the father of a — bastard child, of which she has lately been delivered (or that she is now pregnant with a bastard child by the above —), and the said — has thereupon agreed to assist the said — in the support and maintenance of said child;

Now therefore, the condition of this obligation is such, that if the above —, his heirs, executors and administrators, or any of them, shall well and truly pay to the said —, her executors, administrators or assigns, the sum of — dollars per week for each and every week, from the — day of —, 19—, during the term of — years (or from the birth of said child, if said child shall be born alive), and if said child shall live so long, toward the support and maintenance of said child, then this obligation shall be void; otherwise to remain in full force and effect.

In witness whereof, etc.

1. See ante, vol. 1, § 291.

**5496. Bond for payment of an annuity to husband and wife, she surviving, for their respective lives.**

Know all men, etc.

The condition of this obligation is such that if the above-bounden (obligors), their heirs, executors or administrators shall pay to the said (husband) during his life an annuity or yearly sum of — dollars, by four equal quarterly payments, on the first days of January, April, July and October in every year, and shall pay an apportioned part of such annuity up to the day of the death of the said husband to his executors or administrators, and shall make the first of such payments on the — day of — next, and shall also, in case the said (wife) shall survive the said (husband), pay to the said (wife) during the then remainder of her life a like annuity or yearly sum of — dollars, payable on the like quarterly days, and shall pay an apportioned part of such last-mentioned annuity up to the day of

the death of the said (wife) to her executors or administrators, the first quarterly instalment of such last-mentioned annuity, or a proportionate part thereof, for the interval between the death of the said (husband) and the first of the said quarterly days which shall happen thereafter, to be payable on such last-mentioned day, and shall make all the said payments without any deduction whatever, then, etc.

**5497. Judgment bond with warrant of attorney.**

Know all men by these presents that I, — of —, am held and firmly bound unto — of — in the sum of — dollars current lawful money of the United States of America, to be paid to the said —, his executors, administrators or assigns, to which payment well and truly to be made, I do bind myself, my heirs, executors and administrators, jointly and severally, for and in the whole, firmly by these presents. Sealed with my seal.

Dated the — day of —, 19—.

Now the condition of this obligation is such, that if the above-bounden —, his heirs, executors or administrators, jointly and severally, or any of them, shall and do well and truly pay, or cause to be paid unto the above-named —, his executors, administrators or assigns the just and full sum of — lawful money as aforesaid, on or before the — day of — next, without fraud or delay, then the above obligation to be void, or else to be and remain in full force and virtue; and do hereby authorize and empower any clerk, prothonotary or attorney of any court of record in America or elsewhere, to appear for me, my heirs, executors or administrators at the suit of the said —, his executors, administrators or assigns on the above obligation, as of any time prior or subsequent to the date hereof, and thereupon to confess judgment for the above sum of my debt, besides cost of suit by non sum informatus, nihil dicit or otherwise, with stay of execution until the day of payment.

Sealed and delivered in the presence of —.

\_\_\_\_\_. (Seal.)

\_\_\_\_\_. (Seal.)

**5498. Bond and warrant—Another form.**

Know all men by these presents that —— (hereinafter called the obligor) —— held and firmly bound unto —— (hereinafter called the obligee) in the sum of —— lawful money of the United States of America, to be paid to the said obligee ——, his certain attorney —— or assigns; to which payment well and truly to be made —— the said obligor— do— hereby bind and oblige —— firmly by these presents.

Sealed ——.

Dated the —— day of ——, 19—.

The condition of this obligation is such, that if the above-bounden obligor, ——, shall and do well and truly pay, or cause to be paid, unto the above-named obligee, ——, his certain attorney —— or assigns, the just sum of —— lawful money aforesaid, —— together with interest thereon, payable semiannually, at the rate of —— per cent. per annum, and together with all taxes, or charges in nature thereof, that may be laid or levied on this obligation, or the principal and interest moneys hereby secured, immediately upon their assessment, without any fraud or further delay; and for the production to the said obligee —— or assigns, on or before the thirty-first day of December of each and every year, of receipts for all taxes of the current year assessed upon the premises described in an accompanying indenture of mortgage; then the above obligation to be void, or else to be and remain in full force and virtue. Provided, however, and it is hereby expressly agreed, that no credit shall be claimed or allowed on the interest above provided because of any taxes paid upon said premises, and that if at any time default shall be made in the payment of interest, as aforesaid, for the space of —— days after any semiannual payment thereof shall fall due, or in the payment of any tax or charge as aforesaid, for the space of ninety days after the same shall become payable, or in such production of tax receipts as aforesaid, on or before the day aforesaid, then and in either such case the whole principal debt aforesaid shall, at the option of the obligee— therein named, —— or assigns, become due and payable immediately, and payment of said principal debt, and all interest thereon, shall be

enforced and recovered at once, anything herein contained to the contrary notwithstanding.

Sealed and delivered in the presence of —.

To any Attorney of any Court of Law in State of —:

This is to authorize you to appear for — in any court of competent jurisdiction in case of the breach of the condition of the above bond and confess judgment for the penalty therein contained, as of the last or any subsequent term, with costs of suit and release of errors; and this shall be your sufficient warrant.

In witness whereof, — the said —.

#### **5499. Bond of indemnity to a surety in a bond.**

Know all men by these presents, that — is held and firmly bound unto —, in the sum of — dollars, to be paid to the said —, or to —, his executors, administrators, or assigns.

For which payment, well and truly to be made, — and — bind themselves and their heirs, executors or administrators, jointly and severally, firmly by these presents.

Sealed this — day of —, 19—.

The condition of this obligation is such, that whereas the above-named —, at the special instance and request of the above-bounden —, and for his debt, together with and as well as he, the said —, are held and firmly bound unto one —, in and by an obligation bearing even date herewith, in the penal sum of — dollars conditioned for the true payment of — dollars, according to the terms and conditions therein expressed; if, therefore, the said —, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named —, his executors, administrators or assigns, the sum or sums in said bond mentioned, and at the time when they respectively become due, in the discharge of the obligation; and shall from time to time, and at all times hereafter, save, defend and keep harmless, and indemnify the said —, his heirs, executors and administrators, and his and their goods, chattels, lands and tenements, of and from the said obligation, and of and from all actions, costs and damages for or by reason thereof;

then this obligation to be void, otherwise to remain in full force and effect.

■

**5500. Bond not to carry on business within distance named for certain number of years nor to solicit custom of persons mentioned in schedule.**

Know all men, etc.

Whereas the above-bounden (obligor) and the above-named (obligee) have lately carried on the business of —, in partnership, at — aforesaid; and whereas the said (obligor) and (obligee) have dissolved the said partnership; and the said (obligor), in consideration of the sum of — dollars paid to him by the said (obligee), has assigned to the said (obligee) all his the said (obligor's) share and interest in the stock in trade and effects of the said partnership; and has agreed that he will not, either alone or in partnership with any person whomsoever, carry on the said business of a — within the distance of — of the said house at —, during the term of — years, to be computed from the day of the date of the above-written bond; and that he will not, within the said term of — years, solicit the custom, either for himself or any person whomsoever, of any of the persons whose names are mentioned or specified in the schedule hereunto written; or, otherwise that he will pay the sum of — dollars to the said (obligee), as liquidated damages: Now the condition of the above-written bond is such that, if the said (obligor) should, either alone or in partnership with any person or persons whomsoever, carry on the said trade or business of —, or any branch thereof, within the distance before named in any direction of the said house at —, at any time within the space of — years, to be computed from the day of the date of the above-written bond; or if the said (obligor), either by himself or by any other person whomsoever, should at any time within the said space of — years solicit the custom of any of the persons whose names are specified in the schedule or inventory hereunder written, to deal either with himself, the said (obligor), or with any other person whomsoever in the said trade or business of —, or any of them; or

induce or prevail upon, or attempt to induce or prevail upon, any of the said persons whose names are mentioned in the said schedule not to deal, or to discontinue his, her, or their dealing with the said (obligee),—then, and in either of the said cases, if the said (obligor), his heirs, executors or administrators should forthwith pay to the said (obligee), his executors, administrators or assigns the full sum of — dollars, without making any deduction or abatement thereout whatsoever, the said bond or obligation shall be void and of no effect; otherwise shall be and remain in full force and virtue.

In witness, etc.

#### 5501. Bond for a deed.

Know all men by these presents, that we, — (vendors), of — county, state of —, hereinafter designated as obligor, are hereby held and bound unto — (purchasers), hereinafter designated as obligee, of — county, state of —, in the penal sum of — dollars, for the payment of which we hereby bind ourselves, our heirs, administrators, executors and assigns firmly by these presents:

Sealed with our seals and dated this — day of —, 19—.

The condition of the above and foregoing obligation is such that, whereas, the obligor has this day sold to obligee the following described real estate in — county, state of —, to wit: at and for the sum of — dollars, payable as follows, to wit: — dollars cash, and the remainder payable —.

Said sale is made subject to the performance of the following stipulations:

That said deferred payments shall be made promptly on or before the date herein fixed.

That the obligee shall keep all taxes and all municipal assessments and instalments of assessments accruing and payable after this date paid as the same become due, except —.

That obligee shall keep the improvements on said real estate insured in some reliable insurance company, designated by obligor, for the benefit of obligor, in the sum of \$—, and keep the premiums upon the same paid as they become due, and deliver such policies to obligor.



That obligee shall use said premises well and keep the same in good condition and repair at all times, and obligor shall have the right at any time to enter upon and in said premises for the purpose of inspecting the same.

This bond shall not be assigned or said premises rented or occupied by other persons than obligee, without the written consent of obligor.

It is agreed that upon obligee's failure, refusal or neglect to make said deferred payments or any one or more of them, or upon failure of obligee to comply with any of the terms and stipulations in this bond to be performed by h—, then and in either of said events, said obligee shall, at the option of obligor, forfeit all right, title and interest in and to said real estate and the right to occupy the same, and any sum or sums of money theretofore paid by obligee shall be kept and retained by obligor, and treated as rent for the use and occupancy of said premises from this date to the date of such forfeiture, and the obligor shall thereupon be entitled to the immediate and unconditional possession of said real estate without previous notice or demand. And it is further stipulated and agreed that if the obligee shall, after such forfeiture, occupy said premises, it shall give him no rights whatever, but he may be expelled at any time, and obligor's failure to exercise a forfeiture of this bond for a failure on part of obligee to comply with the terms thereof, shall not estop h— from afterward asserting a forfeiture for a subsequent default.

It is further stipulated and agreed, that if the obligee shall occupy said premises after a default, as provided herein, h— occupancy shall be that of a tenant and not otherwise, and it is hereby expressly agreed that said tenancy shall be only for the period of one month and no longer, from the date of such default, and obligee agrees to pay as rent for said premises for said month the sum of — dollars.

Now, if, upon the payment of the full purchase-price of said real estate, and interest thereon as herein provided, and upon the full and complete compliance with the terms and stipulations in this bond by the obligee to be performed, the obligor, h—

heirs, administrators, executors or assigns shall execute to the obligee a good and sufficient general warranty deed in fee simple for said real estate, subject to taxes and municipal assessments, and the covenants of which shall relate to the condition of the title of said real estate on this date and the acts of the obligor thereafter, then this obligation shall be null and void, else to be and remain in full force and effect.

\_\_\_\_\_. (Seal.)

\_\_\_\_\_. (Seal.)

(Acknowledgment.)

1. Standard form adopted by Indianapolis Real Estate Board.
2. See also, ante, vol. 3, § 2311.

### 5502. Bond for deed—Another form.

Know all men by these presents that we, — of — county, state of —, hereinafter designated as obligor, are held and firmly bound unto —, hereinafter designated as obligee, of — county, state of —, in the penal sum of — dollars, for the payment of which we hereby bind ourselves, our heirs, administrators, executors and assigns firmly by these presents.

Sealed with our seals and dated this — day of —, 19—.

The condition of the above and foregoing obligation is such that, whereas, the obligor has this day sold to obligee the following described real estate in — county, state of —, to wit: —, at and for the sum of — dollars, payable as follows, to wit: — dollars cash, and the remainder payable —.

Said sale is made subject to the performance of the following stipulations:

1. That said deferred payments shall be made promptly on or before the date herein fixed.

2. That the obligee shall keep all taxes and all municipal assessments and instalments of assessments accruing and payable after this date paid as the same become due, except —.

3. That obligee shall keep the improvements on said real estate insured in some reliable insurance company, designated by obligor, for the benefit of obligor, in the sum of \$—, and keep the premiums upon the same paid as it becomes due, and deliver such policies to obligor.

4. That obligee shall use said premises well and keep the same in good condition and repair at all times, and obligor shall have the right at any time to enter upon and in said premises for the purpose of inspecting the same.

5. This bond shall not be assigned or said premises rented or occupied by other persons than obligee, without the written consent of obligor.

It is agreed that upon obligee's failure, refusal or neglect to make said deferred payments or any one or more of them, or upon failure of obligee to comply with any of the terms and stipulations in this bond to be performed by h—, then and in either of said events, said obligee shall, at the option of obligor, forfeit all right, title and interest in and to said real estate and the right to occupy the same, and any sum or sums of money theretofore paid by obligee shall be kept and retained by obligor, and treated as rent for the use and occupancy of said premises from this date to the date of such forfeiture, and the obligor shall thereupon be entitled to the immediate and unconditional possession of said real estate without previous notice or demand. And it is further stipulated and agreed that if the obligee shall, after such forfeiture, occupy said premises, it shall give him no rights whatever, but he may be expelled at any time, and obligor's failure to exercise a forfeiture of this bond for a failure on part of obligee to comply with the terms hereof, shall not estop h— from afterward asserting a forfeiture for a subsequent default.

It is further stipulated and agreed, that if the obligee shall occupy said premises after a default, as provided herein, h— occupancy shall be that of a tenant and not otherwise, and it is hereby expressly agreed that said tenancy shall be only for the period of one month and no longer, from the date of such default, and obligee agrees to pay as rent for said premises for said month the sum of — dollars.

Now, if, upon the payment of the full purchase-price of said real estate, and interest thereon as herein provided, and upon the full and complete compliance with the terms and stipulations in this bond by the obligee to be performed, the obligor, h— heirs, administrators, executors or assigns, shall execute to the obligee a good and sufficient general warranty deed in fee simple for said real estate, subject to taxes and municipal assessments, and the covenants of which shall relate to the condition of the title of said real estate on this date and the acts of the obligor thereafter, then this obligation shall be null and void, else to be and remain in full force and effect.

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

(Acknowledgment.)

### 5503. Bond for a deed—Short form.

Know all men by these presents that —, held and firmly bound unto —, in the sum of — dollars, lawful money of the United States of America, to be paid to the said executors, administrators or assigns, for which payment, well and truly to be made — bind — heirs, executors and administrators firmly by these presents. Sealed with — seal and dated the — day of —, 19—.

The condition of the above obligation is such, that if the above-

bounden obligor — shall on the — day of —, 19—, make, execute and deliver unto the said — (provided that the said — shall, on or before that day, have paid to the said obligor — the sum of — dollars, — the price by said — agreed to be paid therefor), a good and sufficient conveyance, with the usual covenants, — all of the — certain lot —, piece — or parcel — of land, situate, lying and being in the —, county of —, and state of —, and bounded and particularly described as follows, to wit: —, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered in the presence of —.

**5504. Bond to indemnify purchaser against particular defect in title.**

Know all men by these presents that I — (vendor) hereby bind myself to — (purchaser) for the payment to him of the sum of — dollars.

Whereas by an agreement dated — and made between the said parties, the said — (vendor) agreed to sell and the said — (purchaser) agreed to purchase, all that parcel of land in fee simple described as free from encumbrances for the sum of — dollars;

And whereas on investigation of the title of the said — (vendor) it appeared that his title depended upon the fact that —, late of —, deceased, who died on or about the — day of —, died without leaving issue living at his death and that in case said — left any such issue, then the said vendor would be unable to make a good title to said premises;

And whereas said vendor is unable to produce sufficient evidence that the said — left no issue living at his death;

And whereas, nevertheless, the said — (purchaser) has agreed to complete the said purchase upon the said vendor executing the above-written obligation conditioned as hereinafter expressed;

Now the above-written obligation is conditioned to be void in case the said premises shall henceforth be quietly held and enjoyed by the said — (purchaser), his heirs or assigns, without any lawful interruption on the part of any person being

issue of the said —, who was living at his death or claiming through or under such issue, or otherwise claiming title to said premises on the ground that the said — left issue living at his death. Signed, sealed, etc.

1. Compare ante, vol. 4, ch. 92.

**5505. Bond by surviving partners to secure payment of share of deceased partner and for indemnity against partnership liabilities.**

Know all men by these presents that we, — and — (surviving partners) of, etc., hereby bind ourselves jointly and severally to — (executor of deceased partner) for the payment to him of the sum of — dollars.

Whereas the said — and — (surviving partners) and — (deceased partner), late of —, carried on business in partnership under the style of —, and under articles of partnership dated —;

And whereas the said — died on the — day of —, during the subsistence of said partnership, and by his will appointed — his executor, who duly proved said will in the probate court of — county on the — day of —;

And whereas the share and interest of — (deceased partner) in said partnership has been ascertained and agreed to be the sum of — dollars;

And whereas it has been agreed by the parties hereto that the said sum shall be paid by instalments in the manner hereinafter mentioned, and that the said — and — should execute the above-written obligation conditioned as hereinafter expressed;

Now the above-written obligation is conditioned to be void in case the said — and — (surviving partners), or either of them or either of their heirs, executors or administrators shall pay on the — day of — in each and every year to said executor or to the legal representatives for the time being of said — (deceased partner), the sum of — dollars until the whole sum shall be fully paid.

And also shall at all times save harmless and keep fully and effectually indemnified the heirs and legal personal representatives of the said — (deceased partner), his estate and prop-

erty, from all debts, liabilities, claims and demands which now or may at any time hereafter be or become due or be made by any person or persons from or against the said heirs or legal personal representatives of the said — (deceased partner), his estate or effects by reason of the said — (deceased partner) having been a member of the said partnership.

Signed, sealed, etc., by — and — (surviving partners).

1. See ante, vol. 5, ch. 152.

#### 5506. Bond to preserve trade secret.

Know all men by these presents that I, — of —, hereby bind myself to — of —, for the payment to him of the sum of — dollars, as liquidated damages and not as a penalty.

Whereas the said — (obligee) has imparted to said — (obligor) a certain secret method of manufacturing or preparing a certain article known as —, upon an express agreement that said — (obligor) shall enter into the above-written obligation for the payment to said — (obligee) of the sum of — dollars as liquidated damages, and not as a penalty, but conditioned as is hereinafter provided.

The above-written bond or obligation shall be void in case the said — (obligor) shall at all times well and truly keep the said secret, and shall not disclose the same or suffer or permit the same to be disclosed to any person whatsoever, whether employed by the said — (obligor) or not, without the written license of said — (obligee) first had and obtained.

Signed and sealed by — (obligor) this — day of —, 19—.

1. See Assignment, ante, 5289; Bills of Sale, Agreements to Sell, and Conditional Sales, ante, 5400.

#### 5507. Bond by partner to copartner and inventor for protection of secret process.

Know all men by these presents that I, —, partner in the firm of — and —, do hereby bind myself to —, copartner, for the payment to him of the sum of — dollars as liquidated damages and not as a penalty.

Sealed with my seal this — day of —.

Whereas by indenture dated the — day of —, made be-

tween the said parties, they have agreed to enter into partnership for the term of — years;

And whereas the said — has invented a secret process of manufacture, namely, —;

And whereas upon the execution of said articles of partnership, it was agreed that the above-written bond should be given for the preservation of said secret process;

Now this obligation is conditioned to be void in case the said — shall at all times hereafter, during the continuance of said partnership, and afterward, well and truly keep and preserve said secret and shall not disclose the same or suffer the same to be disclosed to any other person except with the consent in writing of the said — (inventor).

(Signature and seal of partners.)

#### 5508. Bond to preserve secret mode of manufacturing article.

Know all men, etc.

Whereas the said (obligee) has imparted to the above-bounden (obligors) a certain secret to be used in the preparation of an article of medicine known as —, upon the express agreement that the above-bounden (obligors) should enter into the above-written bond: Now the condition of the above-written obligation is such that if the above-bounden (obligors), their heirs, executors and administrators do well and truly keep the said secret, and do not disclose the same without a special license, or consent of the said obligor, his heirs or assigns, in writing under his or their hands, first had or obtained for that purpose, then the above-written obligation shall be void; otherwise the same shall remain in full force.

In witness, etc.

1. The penalty may be a fixed sum, expressed "to be paid by way of liquidated and ascertained damages," if the parties so agree, for otherwise no recovery can be had except upon proof of special damage.

2. See ante, vol. 2, § 834n.

#### 5509. Bond with sureties to secure banking account.

Know all men by these presents that we, — and —, merchants and copartners under the firm of — & Co., as principals, and — and —, as sureties, are bound to — and

——, bankers and copartners under the firm of —— & Co., etc.

Whereas the above-bounden (merchants) are carrying on business at ——, and the above-named (bankers) have agreed to open an account with them, and to accept bills and drafts to be drawn by them upon the said bankers, or the survivors or survivor of them, or any other person or persons who, either in partnership with them or any of them, or otherwise, shall for the time being constitute the said banking firm, for any sums not exceeding in the whole, on the balance of account, the sum of —— dollars, provided the said merchants, together with the above-bounden sureties, enter into a bond in the penal sum of —— dollars, with such condition as is hereunder written:

Now the condition of the above-written bond is such that if the said (obligors) or any of them, or any of their heirs, executors or administrators, shall at all times hereafter upon demand pay unto the said bankers, or the survivors or survivor of them, or such other person or persons as aforesaid, all such sums of money as shall be advanced by them or him, to or on account of the said merchants, upon such bills or drafts as aforesaid, and also all interest, commission and customary charges, and shall at all times hereafter keep indemnified the said bankers and every of them, their and every of their heirs, executors and administrators, and also such other person or persons as aforesaid, his and their heirs, executors and administrators, against all losses, damages, costs and expenses which they, or any of them, shall pay, sustain or be put to, for or in respect of such bill or drafts as aforesaid, such sums of money, interest, commission and charges, and such losses, damages, costs and expenses, not exceeding in the whole the sum of —— dollars, then the above-written bond shall be void; otherwise the same shall remain in full force.

In witness, etc.

1. To prevent the release of the sureties by giving time to the principal debtors, the following clause may be added:

Provided that as between the said (sureties) and the said (obligees) respectively, the said (sureties) shall be considered as principal debtors for the moneys intended to be hereby secured, to the intent that they and each of them, their heirs, executors and administrators, shall not be released or exonerated in respect of their liability hereunder by time being given to the said (principals), or either of them, their heirs, executors or administrators,



or by any act or omission of the said (obligees), or the survivor or survivors or such other person or persons as aforesaid, or by any other matter or thing whatsoever, whereby the said (sureties) and each of them, their heirs, executors or administrators, as sureties only for the said (principals) would but for this present provision be so released or exonerated.

**5510. Bond of indemnity to retiring partner against partnership debts.**

Know all men by these presents, etc. Whereas the said —, — and — have carried on the business of —, under the firm of —, at — aforesaid, from the — day of —; and whereas by an indenture bearing even date herewith it has been agreed that the said partnership shall be considered as determined and dissolved from the — day of —, and by the same indenture the said — has assigned and released unto the said — and —, their executors, administrators and assigns all the estate and interest of said —, in the said partnership business, and the moneys, debts, property and effects belonging or due to the said —, — and —, as partners, or in respect of the said partnership; and whereas it was part of the arrangement for the dissolution of the said partnership that the said — and — should execute and give to the said — the above-written bond with such condition for making void the same as hereinafter contained:

Now the condition of the above-written bond is such that, if the said — and —, or one of them, or their heirs, executors or administrators, shall pay all the bills and notes, and all other debts and moneys due or growing due from the said partnership, or any or either partner in respect of the said partnership, and discharge all the liabilities and perform all the engagements of the said partnership to which the said —, — and —, or their respective heirs, executors or administrators, or any of them, are, is, or shall be liable, and shall keep indemnified the said —, his heirs, executors, administrators, estate and effects against all actions, proceedings, losses, damages, costs and expenses for or by reason of the nonpayment, nondischarge or nonperformance of any of the said bills, notes, debts, moneys, liabilities or engagements, or of any act or thing in any wise

relating thereto, then the above-written bond shall be void, otherwise the same shall remain in full force and effect.

1. See ante, vol. 4, ch. 92.

### 5511. Fidelity bond for agent or manager of corporation.

Know all men by these presents that I, — of —, hereby bind myself to the — corporation, its successors and assigns for the payment to them of — dollars.

Sealed with my seal this — day of —.

Whereas the said corporation has taken — (principal) of — into its service and employment as manager at the request of the above-bounden — and pursuant to a written agreement dated —, 19—, made between said corporation acting by its president of the one part and the said — (principal) of the other part:

And, whereas, on the faith of said agreement the above-bounden — (surety) has agreed with said corporation to enter into the above-written bond for the due observance by the said — (principal) of all the provisions of said agreement and for his fidelity, diligence and honesty while in its service, both under the existing agreement for employment and under any and all subsequent agreements or appointments until the said — (surety), or in case of his death, his personal representatives shall revoke the above-written bond:

Now the above-written bond is conditioned to be void in either of the following cases, that is to say:

In case the said — shall observe the provisions of said agreement and shall at all times so long as he shall remain in the employment of said corporation, whether by virtue of his original appointment or otherwise, and shall faithfully and diligently fulfil all his duties.

In case of any breach of said agreement by the said —, or misconduct on his part if the said — (surety) shall keep indemnified the said corporation from and against all losses, damages and expenses which it shall in consequence sustain or incur.

Signed, etc.

—————,

(Signature and seal of surety.)

1. See ante, vol. 4, § 3542.

**5512. Bond of builder with surety for performance of builder's contract.**

Know all men by these presents that we, —— of ——, as principal, and —— of ——, as surety, are held and firmly bound to —— of —— in the penal sum of —— dollars, to be paid to the said ——, or his executors, administrators or assigns, for which payment to be well and truly made we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated this —— day of ——, 19—.

Whereas by certain article of agreement, of even date herewith, and made or expressed to be made between the above-bounden (principal), of the one part, and the above-named (obligee), of the other part, said (principal), for the considerations therein expressed, hath contracted and agreed with the said (obligee) to erect and build on a piece of ground situated at —— certain buildings therein described, in such manner and form, and at or within such time, as therein, and in a specification thereto annexed, and in certain plans, elevations and sections therein referred to, particularly mentioned and set forth; and whereas on the treaty for the said contract it was agreed that the said ——, as principal, and ——, as surety, should enter into the above-written bond or obligation as an additional security to the said (obligee) for the due performance of the said articles of agreement, and of all the covenants, matters and things therein contained on the part and behalf of the said (principal), his executors or administrators, to be done and performed: Now the condition of the above-written bond or obligation is such that if the above-bounden principal, his executors and administrators, do and shall erect and build, complete and finish the said buildings herein described in and by the said articles of agreement contracted to be erected and built at or within the time therein expressed for completing the same, and also do and well and truly observe, perform, fulfil and keep all and every the covenants, contracts, clauses, articles and agreements contained in the said articles of agreements, and which, by or on the part of the said (principal), his executors or administrators, are or

ought to be observed, performed, fulfilled and kept, within such times and in such manner in all respects as in the said articles of agreement are mentioned or required according to the true intent and meaning of the said articles of agreement, and according to the aforesaid specification, plans, elevations, sections and drawings therein referred to, then the above-written bond or obligation shall be void and of no effect, but otherwise shall be and remain in full force and virtue.

1. See ante, vol. 4, ch. 110.

2. See Building and Construction Contracts.

**5513. Bond by contractor with sureties for performance of building contract.**

Know all men, etc.

Whereas the said (principal) has by agreement in writing, dated the — day of —, 19—, and made between the said (principal), of the one part, and the said (obligee), of the other part, entered into a contract for building a house at —: Now the condition of this obligation is such that if the said (principal), his executors or administrators shall duly perform and observe all the stipulations and agreements contained in the said contract, and on his and their part to be performed and observed, and so that any alteration which may be made by agreement between the said (principal) and the said (obligee), his executors and administrators, in the terms of said contract, or the nature of the work to be done thereunder, or the giving by the said (obligee), his executors or administrators, of any extension of time for performing the said contract, or of any of the stipulations therein contained, and on the part of said (principal) to be performed, or any other forbearance on the part of the said (obligee), his executors or administrators, to the said (principal), his executors or administrators, shall not in any way release the said (sureties) or either of them, or either of their heirs, executors or administrators, from their or his liability under the above-written bond, then, etc.

1. See Building and Construction Contracts.

**5514. Bond with surety to firm for securing the faithful service of clerk.**

Know all men, etc.

Whereas the above-named (obligees) have agreed to take the said (principal obligor) into their employ as clerk upon the said (principal) and the above-bounden (surety) entering into a bond in the above-mentioned sum of — dollars, with such condition as is hereunder written, for the faithful service by the said (principal) as clerk: Now the condition of the above-written bond is such that if the said (principal) shall faithfully discharge his duties as clerk, or if the said principal and surety, or either of them, or their heirs, executors or administrators, shall at all times hereafter keep indemnified the said (obligees), their executors, administrators and assigns against all losses, damages and expenses which they may pay or sustain by reason of their taking the said (principal) into their employ, or by reason of any act, mismanagement, neglect or default of or by the said (principal) whilst in their employ or otherwise, then in either of the said cases the above-written bond shall be void; otherwise the same shall remain in full force.

In witness, etc.

1. See also, ante, vol. 4, § 3552.

2. See post, 5759, 5760.

**5515. Indemnity bond for lost note or bill.**

Know all men by these presents that we, — of —, as principal, and — of — and — of —, as sureties, are held and firmly bound unto — of — in the sum of — dollars, to be paid to the said —, or to his certain attorney, heirs, executors, administrators or assigns, for which payment well and truly to be made we bind ourselves, and our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals. Dated the — day of —, 19—.

The condition of this obligation is such that whereas a certain promissory note made by said — (obligee), bearing date the — day of —, 19—, in the sum of — dollars, payable to the said — (principal obligor), is alleged to have been lost

or destroyed: Now, if the said obligors shall well and truly save harmless and indemnify said obligee, his heirs and personal representatives, against all claims by any other person on account of said promissory note, and against all costs and expenses by reason thereof, then this obligation to be void; otherwise to remain in full force and virtue.

1. See also, as to stock certificate, ante, 5751, 5752.

**5516. Bond of indemnity to tenant paying rent where title is in dispute.**

Know all men by these presents, etc.

Whereas an action is now pending between the above-bounden — and others concerning the title to the house and premises situate at —, now held by the above-named obligee under a lease thereof, dated —, 19—, made to him by the above-bounden —; and whereas the said obligee has nevertheless agreed to pay the rent of the said house and premises as the same shall fall due to the said obligor upon the said obligor's agreeing to indemnify him in respect thereof:

Now the condition of this obligation is such that if the above-bounden obligor, his heirs, executors, administrators or assigns shall pay, or cause to be paid, to the said obligee, his heirs, executors, administrators or assigns all such rent, sums of money, costs and damages whatsoever as the said obligee, his heirs, executors, administrators or assigns shall by due process of law or otherwise be compelled to pay, and all costs or damages which he or they shall otherwise sustain or incur by reason of his or their paying the said rent, or any part thereof, to the said obligor, his heirs or assigns, in manner aforesaid, then this obligation shall be void, or otherwise shall remain in full force.

In witness, etc.

**5517. Bond of indemnity against lien claims.**

Know all men by these presents that we, — of —, as principal, and — of —, as surety, are held and firmly bound unto — of — in the sum of — dollars lawful money of the United States of America, to be paid to the said —, his executors, administrators or assigns; to which payment well and

truly to be made we bind ourselves, our heirs, executors and administrators firmly by these presents. Sealed with our seals. Dated the — day of —, 19—.

Whereas the above-named — (principal), by indenture dated the — day of —, 19—, did grant and convey unto the said — (obligee) all that, etc.; and whereas the said building or tenement has been recently erected and constructed, and the time for entering of liens against the same for the payment of debts contracted for work and labor done, and materials furnished, for and about the erection and construction thereof, has not yet expired; and whereas it is desired to indemnify against all such liens, and also against all claims for curbing, paving, etc., which may have accrued prior to the date hereof:

Now the condition of the above obligation is such that if the above-bounden — and —, their heirs, executors, administrators, or any of them, shall and do at all times hereafter well and sufficiently save, defend, keep harmless and indemnify the said — (obligee), his executors, administrators and assigns, and all the said premises, of and from all loss, damage, costs, charges, liability or expense on account of any claims or liens for work and labor done, or materials furnished, for and about the construction and erection of said building, or on account of any claim liens, for curbing, paving, water-pipe, sewers, culverts, drains or other street improvements, or for any tax or other municipal claims, which may have accrued prior to the date hereof, that have been or may be entered, or filed of record, against any part of the above-described premises, with the appurtenances, or in the event of any such liens or claims being made or entered as aforesaid, shall and will forthwith pay off and discharge the same, and have the same satisfied of record, without any fraud or further delay, then the above obligation to be void, or else to be and remain in full force and virtue.

1. See ante, vol. 4, § 3548.

**5518. Bond by vendor to purchaser to indemnify him against dower of vendor's mother.**

Know all men by these presents, etc.

Whereas the above-bounden — is the owner of certain lands

particularly described in a deed made by him to the above-named obligee of even date herewith, to be recorded this day in the registry of deeds for the county of —; and whereas the said lands are subject to the right of dower of the vendor's mother, —; and whereas, upon the negotiations for the sale of said lands, it was agreed that the said vendor should enter into a bond in the penal sum of — dollars for indemnifying the said purchaser, his heirs and assigns, against all claims by the said — to dower in any part of the said lands, with such condition for making void the same as is hereunder written:

Now the condition of the above-written bond is such that if the said vendor, his heirs, executors or administrators, or any of them, shall at all times hereafter keep indemnified the said purchaser, his heirs and assigns, and also every part of the said lands thereby granted, against all actions, accounts, claims and demands for or in respect of the dower, or right of dower, of the said — therein, then the above-written bond shall be void; otherwise the same shall remain in full force.

In witness, etc.

**5519. Bond from legatee to executor, on payment of whole legacy, or part, to refund if there should be a deficiency of assets.**

Whereas —, late of —, deceased, by his will, dated —, 19—, gave and bequeathed unto me, — of —, the sum of — dollars, to be paid within — calendar months next after the said testator's decease, and appointed — executor of his said will, and the said testator died on or about the — day of — last past, and shortly after his decease the said executor duly proved the said will in the probate court for the county of —; and whereas the said executor has not yet ascertained the amount of the debts and credits of the said testator, but, as he believes that the assets of the said testator will be sufficient to pay his debts, and the several legacies given by his said will, said executor has agreed to pay to me, the said —, my said legacy of — dollars, on my entering into the above-written obligation, with such condition as is hereinafter contained:

Now the condition of the above-written bond is such that, if the personal estate of the said testator should not prove sufficient



to pay his debts, funeral and testamentary expenses, and the necessary charges of the said executorship, and all pecuniary legacies given by the said will, then, if I, the said —, my heirs, executors or administrators, should, within — days next after notice to me or them, repay to the said executor, his executors, administrators or assigns the said sum of — dollars so paid to me as aforesaid, or so much thereof as shall appear to be in excess of the sum which shall be due to me, having regard to the amount of the assets of the said testator, in respect of the said legacy of — dollars; and if I, the said —, my heirs, executors or administrators shall, from time to time, and at all times hereafter, keep indemnified the said executor, his executors and administrators, and the estate of the said testator, from all costs, charges, damages and expenses which may happen or come to him or them, or the estate of the said testator, for or by reason of the said executor having paid to me, the said —, the said sum of — dollars in full for my said legacy as aforesaid, or any matter or thing relating thereto, then the above-written bond to be void; otherwise the same to remain in full force.

**5520. Bond by vendor to purchaser against legacies charged on purchased lands.**

Know all men by these presents, etc.

Whereas the aforementioned obligors have negotiated the sale to the above-named obligee of certain land and the buildings thereon, situate at —, in the county of —, which are bounded and described as follows, namely, etc.; and whereas, by the will of —, lately deceased, a legacy of — dollars is made a charge upon the premises and other lands, and it was agreed in the negotiation of said sale that said obligors should execute their joint and several bond in the penal sum expressed with the condition following:

Now the condition of the above-written bond is such that if the said obligors or either of them, or either of their heirs, executors or administrators, shall, at all times hereafter, keep indemnified the said obligee, his heirs, executors, administrators and assigns, and also the said premises hereinbefore recited to be conveyed to the said obligee, his heirs and assigns, as aforesaid, and

every part thereof, against the payment of the legacy, or sum of — dollars, by the said will of the said testator made payable in part out of the above-described property, and all interest to become due for the same, and against all actions, accounts, claims and demands for or in respect of the same legacy, or any part thereof, or any interest for the same, or in any wise relating thereto, then the above-written bond shall be void; otherwise the same shall remain in full force.

In witness, etc.

#### 5521. Bottomry bond.

Know all men by these presents that I, —, master of the ship — of the port of —, for myself am held and firmly bound unto — (lender) in the penal sum of — dollars, for the payment of which well and truly to be made unto the said lender, his heirs, executors, administrators and assigns, I hereby bind myself, my heirs, executors and administrators firmly by these presents.

And for further security of the said lender, I, the said master, do by these presents pledge the said ship and her freight, together with her tackle and apparel, and the cargo now on board; and it is hereby declared that the said ship and her freight and cargo are thus pledged for the security of the money advanced to me, and shall be pledged or mortgaged to no other person until payment of this bond is first made, with the interest that may become due thereon.

In witness whereof I have hereunto set my hand and seal this — day of —.

Whereas the above-named ship having been compelled to put into the port of — for repairs and necessities, and the owners of the said ship and of her freight and the shippers and consignees of the cargo on board of her having refused to provide the money wherewith to pay for the said repairs and necessities, the above-bound master hath been compelled to borrow at bottomry and hath received of the lender the sum of — dollars, which sum is to run at bottomry on the hull and freight and cargo of the said ship from the port of —, on a voyage to the port of —, at the rate of — per cent. for the voyage:

Now the condition of this obligation is such that if the above-bound master, his heirs, executors or administrators shall pay unto the lender or his heirs, executors, administrators or assigns the sum of — dollars, being the principal of this bond, together with the interest which shall become due thereon, within — days after the safe arrival of the ship at her place of discharge in the port of —, or if the said ship is lost on the said voyage, then this obligation and pledge shall be void and of no effect, otherwise to remain in full force and effect. Three bonds of the same tenor and debt have been signed, one of which being paid the others to be void and of no effect.

Signed, sealed and delivered in the presence of —.

(Signature and seal of master.)

1. See Pledges and Collateral Securities, post, 6137.
2. As to meaning of bottomry see ante, vol. 5, § 4437.

## OFFICIAL BONDS.

### 5522. Bond by person in public office with sureties.

Know all men, etc.

The conditions of this obligation is such that if the said (principal), his executors or administrators shall from time to time, and at all times hereafter, duly and faithfully account for, apply, pay, transfer and deliver up all and every the sum and sums of money and property which shall come to the hands or possession of him, the said (principal), or for or with which he shall be chargeable or accountable by virtue of his office of —, or in consequence of his appointment to such office, according to the true intent and meaning of the statute, or regulation which may be in force in relation thereto, then, etc.

1. Clauses providing that giving time shall not affect liability of sureties, and providing for the limitation of the liability of sureties, may be added.
2. See also, ante, vol. 4, ch. 95.

### 5523. Bond of county treasurer.

Know all men, etc.

Whereas the above-bounden — of — was elected to the office of county treasurer of the county of —, on this — day of —, 19—: Now, therefore, the condition of this obligation is such that, if the said — of — and his deputies and all

persons employed in his office shall faithfully and promptly perform the duties of said office, and if the said —— and his deputies shall pay, according to law, all moneys which shall come to his hands as treasurer, and shall render a just and true account thereof, whenever required by said board of commissioners or by any provision of law, and shall deliver over to his successor in office, or to any other person authorized by law to receive the same, all moneys, books, papers and other things appertaining thereto, or belonging to his office, the above obligation to be void; otherwise to be in full force and effect.

In witness, etc.

1. See ante, vol. 4, ch. 95.

#### 5524. Bond of county clerk.

Know all men, etc.

Whereas the above-bounden —— was elected to the office of county clerk of —— on the —— day of ——: Now, therefore, if the said —— shall faithfully perform all the duties of his office, and shall pay over all moneys that may come into his hands as such clerk, as required by law, and shall deliver to his successor in office all the books, records, papers and other things belonging to his said office, then the above obligation to be null and void; otherwise to remain in full force.

In witness, etc.

**BUILDING AND CONSTRUCTION CONTRACTS****5530. Commencements.**

(1) Agreement made this — day of —, between — of —, hereinafter called the contractor, of the one part, and — of —, hereinafter called the owner, of the other part.

(2) Memorandum of an agreement made this — day of —, between — of —, hereinafter called the employer, of the one part, and — and —, copartners doing business under the name or style of — & Co., at —, in the county of —, hereinafter referred to as the contractors, of the other part. Whereas the said employer is about to erect a dwelling-house at —, on — street, and has instructed —, his architect, to prepare drawings and a specification of the said house; and whereas the said contractors have signified their willingness to erect the said house in accordance with the drawings and specifications hereunto appended and signed by the said contractors, and the said architect, and in accordance with the conditions hereinafter set forth, for the sum of — dollars: Now it has been agreed between the said parties, in the manner following, that is to say:

(3) An agreement made this — day of —, between — and —, carrying on business as copartners under the name or style of — & Co., at —, hereinafter called the contractors, of the one part, and the — Railroad Co., of the other part. Whereas the said corporation is desirous that a building shall be erected on a piece of ground situate at —, and has caused to be prepared plans, drawings, elevations and sections of the said building, and a specification of the work, for the erection of the same by —, its architect, and the said plans, drawings, elevations, sections and specifications have respectively been approved of and signed by him and the contractors, and are annexed by way of schedule to this agreement; and whereas the contractors are willing to undertake the execution of said work for the sum

of — dollars, and subject to the covenants and conditions herein contained: Now it is agreed, etc.

1. See ante, vol. 1, §§ 59, 174 and vol. 4, §§ 3612, 3620, 3630 et seq.

### 5531. Common clauses.

(1) The contractor will, at his own proper cost and charge, forthwith begin and in expeditious and workmanlike manner build and finish the said building for the sum of — dollars, agreeably to the elevations, plans, drawings, sections and specification, and under the direction and to the satisfaction of the said architect, or other architect for the time being of the said employer, and in accordance with such explanations and directions as the said architect shall, from time to time, give for the purposes of the work, on or before the — day of —.

(2) The contractor shall, at his own cost, provide all materials and labor, and everything of every sort which may be necessary for the proper execution of work included in this contract, according to the true intent and meaning of the drawings and specification, whether the same may or may not be particularly described therein, provided the same are to be reasonably and obviously to be inferred therefrom; and in case of any discrepancy between the drawings and the specification, the architect is to decide which shall be followed.

(3) No materials or other things shall be allowed to be removed from the ground except upon a written order to that effect given by the architect for the time being.

(4) The contractor hereby declares and agrees that he shall be accountable for the full performance hereof, and by the signing hereof admits that the said plans, elevations, sections, specifications and particulars, before referred to, are sufficient for their intended purpose, and that without any additional or extra work, other than the work set forth thereby, or necessarily inferred to be done from the general nature and tendency of the plans and descriptions aforesaid.

(5) The said contractor shall use all such materials arising from the pulling down of the old buildings on the same grounds as shall be fit and proper to be used therein, and as shall be approved by the architect for the time being; and all such old ma-

terials shall be charged to said contractor, and shall be paid for by him at a valuation to be made by such architect. In case the owner provides the materials, the latter part of this clause should be omitted, and in such case it may be provided that the builder shall be entitled to the old material as follows: "And said contractor shall be entitled to, as his own property, all such old materials as shall not be used in the erection of the new buildings." Or provision may be made for the purchase of the old material as follows: "The contractor shall be entitled to purchase, at a valuation to be made by such architect, any unused part of the old material; the value thereof to be deducted out of the sum payable to him as hereinbefore mentioned."

(6) From the commencement to the completion of every part of the work, the same and all materials and things upon or near the premises, whether placed on the works or not, shall be deemed to be and shall become the property of the said owner, but he shall not be responsible, charged or chargeable for anything lost, stolen, damaged, destroyed or removed from the building, or that shall fail in any way whatever; and the care of the same, and everything connected therewith or appertaining thereto, shall be with the contractor, who shall protect and preserve entire and uninjured the whole of the said work and materials; and if any injury or disfigurement shall be done thereto by fire or by the inclemency of the weather, or by accident of any description, or by the workmen employed, or by any other means whatsoever, then, and in every such case, the contractor shall completely repair or replace the same, as the case may be, at his own cost, so that on the completion of the work every part thereof may be perfect and in a clean state.

(7) The said buildings shall be erected wholly with materials provided for that purpose by the owner. The contractor shall be accountable for all materials which shall be delivered at the place where the same are intended to be used, and he shall be charged with the respective quantities of articles so delivered, and credited with so much thereof as shall be actually used upon and about said buildings, together with a reasonable allowance for waste in using the same; and in case there shall be

any balance or deficiency in materials, then the contractor shall be accountable for and charged with all such balance or deficiency, at and after the rates and prices respectively at which the said materials were purchased.

(8) Every part of the work shall be executed as directed by the specifications, and in the most sound, workmanlike and substantial manner, and all materials used in the construction of the building shall be new and the best of their respective kind, except where otherwise distinctly directed or allowed in and by the specifications.

(9) The architect for the time being shall have power to require the contractor immediately to dismiss any workman, watchman or other servant of the contractor who shall in the architect's opinion misconduct himself or be incompetent, and the contractor shall forthwith comply therewith.

(10) If any materials shall be brought on the said premises which shall not be approved of by the said —, or such other architect as aforesaid, the contractor shall take them away at his own expense, and provide such other materials in lieu thereof as the said architect shall approve; and if any part of the said work shall not be executed to the satisfaction of such architect, the contractor will immediately take down and execute such work as the said architect may require.

The said —, or such other architect as aforesaid, shall also have power to order the removal of any part or parts of the work which may appear to him to be of an improper construction, and any materials which he shall decide to be of improper quality or unfit for the work, whereupon the contractors shall remove such part or parts of the work and reinstate the same to the satisfaction of the architect, and shall remove all such materials from the ground.

(11) The contractors will, during the whole time of building, and until the completion of the said intended building and work, give due personal attendance in the execution thereof, in order that the same be carried on, executed and performed in a proper manner in every respect, and shall not employ any subcontractor for the execution of the same, or any part thereof.



(12) The contractor shall keep a foreman in each department of the work, to whom directions may be given by the architect for the time being, and who shall superintend the workmen in his respective department.

(13) The contractor or his foreman shall always be at the building during the usual working hours, except when required at the architect's office.

(14) The contractor shall not deviate from the drawings or specifications, or execute any extra work of any kind whatsoever, unless authorized by the architect for the time being, by his written order or by any plan or drawing expressly given and signed by him as an extra or variation, or by any subsequent written approval signed by him. In all cases of day work vouchers therefor are to be delivered to the architect at latest during the week following that in which the work was done, and only such day work is to be allowed for as the architect may have authorized.

1. See ante, vol. 4, § 3697.

(15) The building, from the commencement of the work to its completion, is to be under the contractor's charge; he is to be held responsible for, and to make good, all injuries, damages and repairs occasioned or rendered necessary to the same by fire or other causes over which the contractor shall have control, and he is to hold the employer harmless from any claims for injuries to persons or for structural damage to property happening from any neglect, default, want of proper care or misconduct on the part of the contractor, or of any one in his employ, during the execution of the work.

(16) Until this contract shall be completed and the buildings handed over to the owner in accordance therewith, the contractor shall in every respect be responsible for, and shall replace and make good, all loss, injury or damage to the premises, or to the owners of any land or buildings adjoining, which may be caused or done by him or his workmen, or which he or they might have prevented.

(17) The contractor shall provide proper day and night watchmen, whose wages shall be paid by the contractor.

(18) The contractors are to insure the building against loss or damage by fire, in a company to be approved, in the joint names of the employer and contractors, for half the value of the work executed, until it shall be covered in, and thenceforth until completion, for three-fourths of the amount of such value, and are, upon request, to produce to the architect the policies and the receipts for the premiums for such insurance. All moneys received under any such policies are to be applied in or toward the rebuilding or reparation of the work destroyed or injured. In case of neglect, the employer is at liberty to insure and deduct the amount of the premiums paid from any moneys payable to the contractors.

(19) The contractor shall, upon completing said work, remove all the scaffolding, fencing, rubbish and materials then remaining in or about the said buildings, and leave the premises in a perfect and proper condition.

(20) The said —, or such other architect as aforesaid, shall have the custody of the plans, elevations, sections and specifications, and when the contract shall have been performed shall deliver the same to the owner.

(21) Complete copies of the drawings and specifications, signed by the architect, are to be furnished by him to the contractor for his own use, and the same or copies thereof are to be kept in the buildings, in charge of a competent foreman, who is to be constantly kept on the ground by the contractor, and to whom instructions can be given by the architect.

1. See ante, vol. 4, ch. 97.

(22) The owner agrees to pay to the said contractor, for the completing and finishing of said building, the sum of — dollars, in the manner following: — dollars when the mason's work is completed; — dollars when all the plasterer's work has been done; and — dollars, being the remainder of the sum to be paid hereunder, upon the expiration of — days after the completion of said building and its acceptance by the owner. Provided, that in such case, before any payment is made, a certificate shall be obtained from said architect that the work has been done in a good and workmanlike manner, in accordance with this

contract and the drawings and specifications herein referred to, and the work has been completed so far as to entitle the contractor to the payment demanded.

(23) The owner shall pay to the contractor the sum of — dollars in the manner following, that is to say: The sum of seventy-five per cent. of the value of the materials used and labor performed, as the same shall proceed, in sums not less than — dollars at each payment, such value and percentage being ascertained and certified to in writing by the said — or other architect as aforesaid. The final account shall be adjusted and settled within — months after the said work shall have been completed, and the said — or such other architect shall have certified in writing as to the balance then payable to the contractor; and the rest and residue of the said sum of — dollars, and also such further sum as may be due for extra work, shall be paid by the owner to the contractor; but the contractor shall not be entitled to such final payment, notwithstanding any certificate given during the progress of the work, until the said —, or such other architect as aforesaid, shall have certified in writing that the whole of the said work has been completed to his satisfaction.

1. To which may be added:

"And the owners shall provide and supply the contractor, each and every week during the progress of such work, and until the same shall be finished, with all such sum and sums of money as shall be necessary for the purpose of paying and discharging the wages of all workmen and laborers that shall from time to time be employed in or about the said works, the amount thereof to be ascertained in the manner hereinbefore provided."

2. See also, ante, vol. 4, ch. 104.

(24) Provided that, notwithstanding any certificate may have been given by the said architect for the time being, if any bad work or defect contrary to the terms of this agreement shall be discovered within — months after completion of said work, no further payment, if any be due, shall be made to the contractor, but he shall make good all such defective or bad work, in accordance with the stipulations herein contained, within — days after written notice from the owner, or, in default, the owner may do so, and the cost and expense incurred in such a case shall be paid by, and be recoverable from, the contractor.

(25) The payments made from time to time to the contractor,

during the progress of the work, shall be held to be payments generally on account of the contract sum, and the architect's certificates, on which such payments are based, shall be held to have been given only for the purpose of fixing the sums to be so paid, and shall not in any way prejudice the said owner in the final settlement of account, in case it should appear that too much had been paid to the contractor during the progress of the work.

1. See ante, vol. 4, §§ 3641-3646.

(26) The decision of the said —, or such other architect as aforesaid, certified by him in writing, upon all matters relating to the amount, state and condition of the work actually executed, and upon all works with respect to the construction of said plans, elevations, sections and specifications, and in any wise relating to anything to be done hereunder shall be binding and final on both parties, except so far as a subsequent certificate may modify the certificate preceding.

1. See ante, vol. 4, § 3642.

(27) The said —, or such other architect as aforesaid, shall be at liberty to direct the builders to execute any part or parts of the work before any other part or parts thereof, and he shall have authority to judge of the manner of executing every part of the work, and of the quality of the materials used or intended to be used therein.

The owner may at any time during the progress of the work, by order in writing under his hand, make, or cause to be made, any alterations in the said original specification and plans by way of addition or omission, or otherwise deviating therefrom; and the said work shall be executed according to the said alterations or deviations under the architect's direction and to his satisfaction, in the same manner as if the same had been included in the said original specification and plans; and any work or materials which shall so be ordered not to be done or used shall be omitted, or shall not be used by the contractor.

All additions and deductions to be made to or from the amount of the contract-price, in respect of any such alterations or deviations from the said specification or plans as aforesaid, shall be fixed by the said architect, and the difference of expense occa-

sioned by any such alterations or deviations shall be added or deducted, as the case may be, to or from the contract-price. But no payment or allowance whatever shall be made to the contractor for any extra work done or materials used by him without the owner's previous written order or authority; and no alteration or deviation so ordered or authorized shall in any wise alter the total contract-price to be paid to the contractor, except so far as the same shall alter the amount of labor or the value of the materials which may be required to be used in or about the works, or alter the mode in which the contract-price is to be paid, or in which the value of the work done is to be ascertained with a view to the payment thereof. And the contractor shall not, by reason of any such additions or alterations, be allowed any further time for completing the same, except such as the said architect shall in writing certify to be reasonable.

The owner shall be entitled to deduct any moneys which the contractor shall be liable to pay to the owner hereunder or otherwise, from any sum payable to the contractor hereunder; and the said architect, in making his certificates as aforesaid, shall have regard to any sums so chargeable against the contractor: provided always that this provision shall not affect any other remedy by action at law, or otherwise, to which the owner may be entitled for the recovery of any such moneys.

The contractor shall conform in all respects to the provisions and regulations of any general or local building act or ordinance, or of any local authority, which may be applicable to the said work, and indemnify the owner against all penalties incurred by reason of the nonobservance of any such provisions or regulations.

(28) In case it shall happen that the said intended building shall be damaged, burnt down, or destroyed by or by means of fire, storm or tempest, at any time before the same shall be completely finished and fit for habitation, then, and in such case the penalty to be incurred for not finishing the said building on or before the said — day of — shall not be forfeited or become payable to the builder, anything hereinbefore contained to the contrary thereof in any wise notwithstanding; but no such acci-

dent or event shall be deemed or construed to affect a revocation, annulment or suspension of the contract hereby entered into with respect to the erecting and completing the said house and work, any further or otherwise than may regard the time hereby limited for completing the same.

(29) In case the contractor, at any time during the progress of the work, should refuse or neglect to supply sufficient materials or workmen, or should abandon the contract, the owner shall have the power to provide materials and workmen, first giving the contractor three days' written notice to go on with the work in accordance with the contract, by delivering such notice to the contractor or posting the same on said building; and the owner may finish the said work, and may charge the cost thereof to the contractor, who shall be liable therefor, or may deduct the cost of the same from the amount due the contractor hereunder.

1. See ante, vol. 4, § 3722.

(30) In case the said work shall not be completed, and the said house shall not be fit for habitation, on or before the said — day of —, the contractor shall pay to the employer, and forfeit out of the moneys which shall be due to him by virtue of this agreement, as and for liquidated or assessed damages to be incurred by such default, the sum of — dollars per week until the said work shall be completed. Provided that in case the contractor shall be prevented by any strike among the workmen from complying with this agreement, the said —, or such architect as aforesaid, may extend the time for the completion of the work for such reasonable period as he may think fit and certify in writing to be necessary. Provided also that, if the contractor shall be required to suspend work on account of frost or inclement weather, upon receiving written notice to that effect from the architect, the time during which the work shall be so suspended shall be added to the time within which the work is to be completed.

The contractor shall take all necessary and proper steps to make carefully and skilfully all excavations without injury to adjoining buildings and property, and to save and keep the owner harmless and indemnified from and against all liability and damage by rea-

son of excavations, if any, and failure to properly, carefully and skilfully make the same, and to properly, carefully and skilfully perform all the work contracted for.

The contractor shall save and keep the building referred to herein, and the lands on which it is situated, free from all mechanics' and other liens, by reason of his work, or of any materials or other things used therein; and if the contractor fails so to do, the owner may retain sufficient of the contract-price to pay the same, and all costs by reason of or in consequence thereof, and may pay the same and deduct the amount thereof from the contract-price.

(31) If the contractor becomes a bankrupt, or compounds with his creditors, or neglects or fails or becomes unable to proceed with the work as directed by the architect (unless the work shall be interrupted by a general strike or refusal to work), the owner may, after an architect's certificate to that effect, get the work done by any other contractor or workman as he shall think fit, and the contractor and his assignees shall thereupon forfeit all claim to further payment hereunder, except to such balance (if any) as shall remain out of the said sum of — dollars after the completion of the work by such other contractor or workman, and the contractor or his assignees shall not be at liberty to remove any scaffolding or materials from the premises until the same shall cease to be required.

1. See ante, vol. 4, ch. 98.

(32) If any dispute or difference shall arise between the said owner or his architect and the contractors, with respect to any matter or thing arising out of or in any wise relating to the contract, and not hereby expressly agreed to be determined by the architect, then such difference or dispute shall, immediately after it has arisen, be referred to the final determination and award of two competent persons as arbitrators, one of whom shall be chosen by the said owner and the other by the contractors, and of an umpire to be named by the two arbitrators, and the award of the arbitrators, or of their umpire, if they disagree, shall be final and conclusive, as to the matters referred to them, to be made in writing under their or his hands or hand, and ready to

be delivered to the said owner and the contractors, within —— calendar months after such reference, or within such further time, not exceeding —— calendar months from the time of such reference, as the arbitrators or their umpire shall by writing, under their or his hands or hand, from time to time appoint.

- The costs and charges attending such reference shall be in the discretion of the arbitrators or their umpire, and shall be paid as they or he, by their or his award, shall direct.

1. See ante, Arbitration.

**5532. Contract between contractors and committee or trustees for building church.**

This agreement, made this —— day of —— between —— and —— of ——, hereinafter called the contractors, of the one part, and ——, ——, and ——, hereinafter called the committee, of the other part,

Witnesseth, that, for the consideration hereinafter stated, the said —— and ——, builders, for themselves, their executors and administrators, covenant and agree with the committee, their executors and administrators, as follows:

That the contractors will build and complete within —— months from the time when they are put in possession of the ground, for the sum of —— dollars, a church at ——, in the county of ——, according to the plans and specification, and directions from time to time of ——, the architect, or such other architect as may from time to time be employed by the committee, including all things which, in the opinion of the architect, may fairly be inferred from such plans and specifications to be intended without being actually specified.

The contractors shall also execute all such alterations and additional works as shall be ordered by the architect with the consent of the committee or by the committee; but if the contractors shall be of opinion that any such alteration or addition will cause additional expense, they shall not be bound to execute the same without an order in writing from the committee, stating the price which is either agreed on or certified by the architect as the proper sum to be allowed for the same, and after giving credit for the value of any omissions which have been ordered;



and such order shall state also the extension of time, if any, which is to be granted by reason thereof; and neither the contractors, nor any subcontractor under them, shall be entitled to receive from the committee, or any member thereof, any more than the sum of — dollars, together with the amount of the sums contained in all such orders as last aforesaid; nor shall this clause be held to have been waived in consequence of anything to be done by the committee, except by an express waiver in writing, and then only as to the particular things included therein. The contractors shall, if required for the valuation of extras, produce the bill of quantities, with the prices thereto attached, on which their tender was based.

The contractors shall follow the directions of the architect in all respects, and of the clerk of the works in his absence, subject to the last preceding clause; but neither of them shall be considered for any purpose the agent of the committee, nor have any power to act contrary to their directions. And the whole of the work shall be done to the satisfaction of the architect. But the passing or certifying of any work by the clerk of the works (generally called the superintendent), or by the architect himself, shall not exempt the contractors from liability to replace the same, if it be afterward discovered to have been done ill, or not according to the plan and specification, either in execution or materials.

If anything shall be discovered to have been done in an inferior way, or contrary to the specification or plan, and especially (but without prejudice to any other questions) if any masonry or woodwork shrinks, cracks or opens in the joints, either before the work is certified to be complete, or within a year afterward, the contractors shall make good the same, not by patching, but by substituting new work, which shall be subject to the same condition; and if any payments are still due to the contractors, they shall be suspended until such defective work has been made good to the satisfaction of the architect, and subject to this same condition.

Payment shall be made to the contractors at the rate of — dollars for every — dollar's worth of work certified by the

architect to have been done, or of materials delivered on the ground; and all materials shall become the property of the committee as soon as they are delivered, subject to the right of the contractors to remove all surplus materials when the work is finished.

When the amount so kept back has reached the one-tenth part of the whole amount of the contract, the contractors shall be paid ninety per cent. of each further sum certified by the architect to be due. And all such payments of instalments shall be made within —— weeks after the architect's certificate has been received, unless the committee dispute the propriety thereof; and half the balance remaining due shall be paid in —— months after the architect's final certificate that the work has been completed according to the contract, and the building has been delivered to the committee; and the other half in —— months, unless some defect has been meanwhile discovered as aforesaid, or the committee bona fide dispute their liability to pay on some other ground.

The balance due to the contractors shall be diminished by —— dollars for every day that the work is not completed after the time hereinbefore fixed for the completion thereof. But the architect shall have power to extend the time for any good cause, such as strikes of workmen or bad weather, or additions or alterations ordered by the committee, at the time when such cause arises, or as soon as it has ceased.

If the contractors, or either of them, become bankrupt, or assign their property for the benefit of creditors, or become otherwise unable to carry on the work, or neglect to do so at any time for a fortnight in the manner required by the architect, or refuse to follow his directions as to the mode of doing the work, the committee may at once terminate the contract; and thereupon all claim of the contractors or contractor so acting, his executors, administrators and assigns shall cease, and the committee may employ other persons to complete the work, as they think fit; and in that case no scaffolding, or fixed tackle of any kind, belonging to such contractor, shall be removed so long as the same is wanted for the work. But if any balance on the amount of this contract

remains after completion, in respect of work done during the time of the defaulting contractors or contractor, the same shall belong to the persons legally representing them or him, but the committee shall not be liable or accountable to them in any way for the manner in which they may have had the work completed.

All notices or orders from the committee or the architect may be either given, or sent to or left for, the contractors or either of them by post, at the works or at their usual place of residence or business. And every person employed on the work by the contractors, whether by a subcontract or otherwise, shall be considered their agent or servant. And any order or notice signed by the secretary or other person on behalf of the committee shall stand until the same is revoked or corrected.

It is to be understood that the contractors and workmen are only admitted to the ground for the purpose of building, and have no tenancy thereof; and any workman misconducting themselves, or found to be doing their work improperly, may be discharged and removed if necessary, by the committee, or architect, or superintendent.

The contractors shall be answerable for all damage to the building during construction, and until the same has been certified by the architect as complete, and shall keep it insured to an amount equal to the value of the work done from time to time (and, in case of additions to an old building, shall also be answerable for an injury to the existing building from any cause which might have been prevented by them or their employés), and shall deliver up the building to the committee in perfect repair, clean and in good condition, when complete.

In witness whereof, the parties hereto have set their hands and seals the day and date first above written.

### **5533. Contract for erecting public building.**

These articles of agreement, made and entered into this — day of —, 19—, by and between the board of police commissioners for the city of —, in the state of —, party of the first part, and —, of the same place, party of the second part, witnesseth:

That the said party of the second part, for and in consideration of the sum hereinafter mentioned, does hereby covenant, promise and agree to and with the said parties of the first part, or with their successors in office, to provide all materials, and to execute and complete for the said parties of the first part certain works required in and for the erection of the — police station-house, on the — corner of — and — streets, in the city and state aforesaid, according to the general drawings, specifications and detailed drawings furnished by —, architect, and hereinafter called the said architect, and agreeably to the conditions hereinafter written, as well as to such other general or detail drawings as may be furnished from time to time during the progress of the work to more fully illustrate the general drawings and specifications, and subject in every particular to the instruction and approval of the said architect.

It is further understood and agreed by the said party of the second part, for himself, his executors, administrators or assigns, that all the materials shall be in strict accordance with the specifications, and that the work shall be done in the best and most workmanlike manner.

It is further understood and agreed by the said party of the second part, for himself, his executors, administrators and assigns, that neither he nor they are to sublet or transfer this contract to any person or persons, but shall carry out its requirements under his own supervision.

The said parties of the first part, the said architect, or any one he or they may depute, shall at all times have access to the premises, the drawings and specifications, and, at all reasonable times, to the business premises of the said party of the second part, to inspect the work in the progress of execution.

In consideration of the said work being executed and completed by the said party of the second part, his executors, administrators or assigns, in accordance with all the drawings furnished, and with the specifications and general conditions therein written, which are in every particular to be regarded as part of this contract, and with the terms and conditions herein contained, the said parties of the first part agree to pay, or cause to be paid,

to the said parties of the second part the sum of — dollars, in the following manner, viz., in instalments, to the amount of ninety per cent. of the contract-price, upon certificates, which the said architect will issue at different stages of the work, for the following amounts, viz.: — dollars when the walls are ready for the joists of the first floor; — dollars when the joists of the second floor are laid; — dollars when the joists of the third floor are laid; — dollars when ready for the roof; — dollars when roofed in; — dollars when ready for plasterers; — dollars when ready for the painter; — dollars when finished; and the balance, — dollars, is to be paid to the said party of the second part when the said architect gives a certificate that the work has been completed according to the drawings and specifications and to his entire satisfaction, and when vouchers are produced showing that all bills have paid for materials furnished and labor furnished upon said station-house, or when a release from lien or liens under the laws of the state of — is furnished from all parties having claims for materials furnished or work done in the said building.

It is further understood and agreed between the aforesaid parties that when the building is under roof the said party of the second part shall insure at his own expense, and keep the same insured, against damage by fire until acceptance by the parties of the first part; the proceeds or avails of said policy or policies of insurance, in the event of damage or destruction, to be applied or devoted to the reconstruction of the works so destroyed or damaged.

(Time condition is desirable.)

In witness whereof, the parties hereunto set their hands and seals, the day and year first above written. (Signed.)

Signed, sealed and delivered in presence of

\_\_\_\_\_. (Seal.)  
 \_\_\_\_\_. (Seal.)  
 \_\_\_\_\_. (Seal.)

#### 5534. Notice to builder to proceed with work.

To — of — (builder).

I hereby give you notice and require you forthwith to proceed

diligently, and in a proper and workmanlike manner, with the erection and completion, in accordance with the contract entered into by you with me, dated the —— day of ——, of the building therein described, situate at ——; and that in case you shall neglect or refuse to proceed therewith as aforesaid for —— days after the service hereof, I shall then enter into and upon the said premises, and employ such other builder and workmen and supply such materials as may be necessary to complete and finish the said work at your risk and expense, or I shall sell the same, either finished or unfinished, as I may be advised; and that I shall take all such proceedings as may be necessary for the purpose of completing the work in accordance with the said contract of the —— day of ——, and obtaining payment of all such moneys as shall be or become due to me pursuant to the said contract, without any further notice. Dated the —— day of ——, 19—.

1. See also, ante, vol. 4, § 3681.

#### 5535. Contract for building machine or vehicle.

This agreement, made this —— day of ——, 19—, between —— of ——, first party, and —— of ——, second party, witnesseth:

Said first party shall build, construct and complete a machine (or vehicle, etc.), of the dimensions and materials as shown in the plans and specifications affixed hereto and made a part hereof, and in all particulars conform to the plans and specifications made a part hereof and under the directions of the superintendent of building named herein, for the sum of —— dollars, to be paid as hereinafter stipulated.

Said first party shall furnish all the materials for said machine according to the specifications, excepting only such as by the express terms thereof are to be furnished by the second party. The whole of said machine shall be built, constructed and finished of materials of the best quality, in the most durable and workmanlike manner.

Mr. —— shall superintend the building and construction of said machine.

Said machine shall be completed on or before the —— day of

— and thereupon placed at the disposal and under the direction of said superintendent at —.

In consideration of the premises the second party shall pay to the said first party said sum of — dollars, in instalments, as the material is delivered and the work done, as follows:

The first payment of — dollars shall be made on the — day of —, 19—. The remainder of said price (— dollars) shall be paid when said job has been duly tested and accepted by the superintendent, and is delivered.

In witness whereof, etc.

1. In this kind of contract it is customary to set out plans and specifications as to all parts in detail, and attach the same to the body of the contract.

### 5536. Agreement for building road.

Agreement made this — day of —, 19—, between — of —, of the one part, the employer, and — of —, of the other part, the contractor.

The said contractor agrees with the said employer that said contractor will forthwith lay out, according to the dimensions and grades thereof, this day agreed upon between the said parties, and stated in the plan and specifications hereunto annexed, and within — weeks from the date hereof form, make and complete a road — feet long and — feet wide, with a footpath or sidewalk — feet wide on each side thereof, as the same is shown on the said plan; such road to be made upon land belonging to the said employer, situate, etc.;

That he will excavate the soil or earth forming the surface of the said intended road to an average depth of — inches at the least, and so that the sides shall be — inches lower than the center of such road;

That he will cover the said road with gravel — inches deep, and the footways — inches deep, at the least;

That he will remove all the surplus soil and rubbish from off the said land, and leave the said road and footpaths and the parts of the field adjoining them affected by such works in a proper state, order and condition;

That he will perform the whole of the said work, and any other incident thereto, in a good, proper and workmanlike man-

ner, for the sum of —— dollars, and will cart the gravel and other materials used in and for the said road and footpaths from such place or places, not exceeding —— miles distant, as the said employer shall appoint, and perform all such other cartage as may be necessary for the said works.

The said employer agrees to pay the said contractor the sum aforesaid for the said work, as soon as the same shall have been duly completed according to this contract.

In witness, etc.

### 5537. Contract to build boat.

This agreement made this —— day of ——, 19—, between —— of ——, party of the first part, and —— of ——, party of the second part, witnesseth:

Said party of the first part, in consideration of the promises hereinafter contained, hereby agrees to build, construct and complete a boat of the materials and dimensions as shown in the plans and specifications hereto attached, and made a part hereof, and identified by the signature of the parties hereto, and to conform to said plans and specifications under the direction of the superintendent of building named herein.

Said party of the first part shall furnish all the materials for said boat according to the specifications, excepting only such as are to be expressly furnished by the party of the second part. The whole of said vessel shall be constructed of materials of the best quality, in the most durable and workmanlike manner to the satisfaction of ——, who shall superintendent the building of said boat.

Said boat shall be fully completed with its engines and machinery so that it may be placed at the disposal of the party of the second part on or before the —— day of ——, 19—.

In consideration of the foregoing, the party of the second part shall pay to the said party of the first part the sum of —— dollars, in instalments, as the work is done, as follows: The first payment of —— dollars shall be made when the keel is completed; the next payment of —— dollars shall be made when the deck is finished; the remainder of the contract-price (—— dol-



lars) shall be paid when said boat has been accepted by the superintendent.

In witness, etc.

\_\_\_\_\_  
\_\_\_\_\_.

1. Other clauses may be added as in the opinion of the drafter the object of the contract and the situation of the parties require.

### 5538. Uniform building contract.

(Form of contract adopted and recommended for general use by the American Institute of Architects and the National Association of Builders. Copyrighted 1905 by the American Institute of Architects, Washington, D. C. E. G. Soltmann, 125 E. Forty-second street, New York, licensee for exclusive publication. Used by permission.)

This agreement, made the —— day of ——, 19——, by and between ——, party of the first part (hereinafter designated the contractor), and ——, party of the second part (hereinafter designated the owner), witnesseth that the contractor, in consideration of the agreements herein made by the owner, agrees with the said owner as follows:

Article I. The contractor shall and will provide all the materials and perform all the work for the —— as shown on the drawings and described in the specifications prepared by ——, architects, which drawing and specifications are identified by the signatures of the parties hereto, and become hereby a part of this contract.

Art. II. It is understood and agreed by and between the parties hereto that the work included in this contract is to be done under the direction of the said architects, and that their decision as to the true construction and meaning of the drawings and specifications shall be final. It is also understood and agreed by and between the parties hereto that such additional drawings and explanations as may be necessary to detail and illustrate the work to be done are to be furnished by said architects, and they agree to conform to and abide by the same so far as they may be consistent with the purpose and intent of the original drawings and specifications referred to in Art. I.

It is further understood and agreed by the parties hereto that any and all drawings and specifications prepared for the purposes of this contract by the said architects are and remain their prop-

erty, and that all charges for the use of the same, and for the services of said architects, are to be paid by the said owner.

Art. III. No alterations shall be made in the work except upon written order of the architects; the amount to be paid by the owner or allowed by the contractor by virtue of such alterations to be stated in said order. Should the owner and contractor not agree as to amount to be paid or allowed, the work shall go on under the order required above, and in case of failure to agree, the determination of said amount shall be referred to arbitration, as provided for in Art. XII of this contract.

Art. IV. The contractor shall provide sufficient, safe and proper facilities at all times for the inspection of the work by the architects or their authorized representatives; shall, within twenty-four hours after receiving written notice from the architects to that effect, proceed to remove from the grounds or buildings all materials condemned by them, whether worked or unworked, and to take down all portions of the work which the architects shall by like written notice condemn as unsound or improper, or as in any way failing to conform to the drawings and specifications, and shall make good all work damaged or destroyed thereby.

Art. V. Should the contractor at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in any respect to prosecute the work with promptness and diligence, or fail in the performance of any of the agreements herein contained, such refusal, neglect or failure being certified by the architects, the owner shall be at liberty, after three days' written notice to the contractor, to provide any such labor or materials, and to deduct the cost thereof from any money then due or thereafter to become due to the contractor under this contract; and if the architects shall certify that such refusal, neglect or failure is sufficient grounds for such action, the owner shall also be at liberty to terminate the employment of the contractor for the said work and to enter upon the premises and take possession for the purpose of completing the work included under this contract, of all materials, tools and appliances thereon, and to employ any other person or persons to

finish the work, and to provide the materials therefor; and in case of such discontinuance of the employment of the contractor, — shall not be entitled to receive any further payment under this contract until the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the owner in finishing the work, such excess shall be paid by the owner to the contractor; but if such expense shall exceed such unpaid balance, the contractor shall pay the difference to the owner. The expense incurred by the owner as herein provided, either for furnishing materials or for finishing the work, and any damage incurred through such default, shall be audited and certified by the architects, whose certificate thereof shall be conclusive upon the parties.

Art. VI. The contractor shall complete the several portions, and the whole of the work comprehended in this agreement by and at the time or times hereinafter stated, to wit: —.

Art. VII. Should the contractor be delayed in the prosecution or completion of the work by the act, neglect or default of the owner, or the architects or of any other contractor employed by the owner upon the work, or by any damage caused by fire or other casualty for which the contractor — not responsible, or by general strikes or lockouts caused by acts of employés, then the time herein fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid, which extended period shall be determined and fixed by the architects; but no such allowance shall be made unless a claim therefor is presented in writing to the architects within forty-eight hours of the occurrence of such delay.

Art. VIII. The owner agrees to provide all labor and materials essential to the conduct of this work not included in this contract, in such manner as not to delay its progress, and in the event of failure so to do, thereby causing loss to the contractor, agrees that — will reimburse the contractor for such loss; and the contractor agrees that if — shall delay the progress of the work so as to cause loss for which the owner shall become liable,

then — shall reimburse the owner for such loss. Should the owner and contractor fail to agree as to the amount of loss comprehended in this article, the determination of the amount shall be referred to arbitration as provided in Art. XII of this contract.

Art. IX. It is hereby mutually agreed between the parties hereto that the sum to be paid by the owner to the contractor for said work and materials shall be —, subject to additions and deductions as hereinbefore provided, and that such sum shall be paid by the owner to the contractor, in current funds, and only upon certificates of the architects, as follows: —.

The final payment shall be made within — days after the completion of the work included in this contract, and all payments shall be due when certificates for the same are issued.

If at any time there shall be evidence of any lien or claim for which, if established, the owner of the said premises might become liable, and which is chargeable to the contractor, the owner shall have the right to retain out of any payment then due or thereafter to become due an amount sufficient to completely indemnify — against such lien or claim. Should there prove to be any such claim after all payments are made, the contractor shall refund to the owner all moneys that the latter may be compelled to pay in discharging any lien on said premises made obligatory in consequence of the contractor's default.

Art. X. It is further mutually agreed between the parties hereto that no certificate given or payment made under this contract, except the final certificate or final payment, shall be conclusive evidence of the performance of this contract, either wholly or in part, and that no payment shall be construed to be an acceptance of defective work or improper materials.

Art. XI. The owner shall during the progress of the work maintain insurance on the same against loss or damage by fire —, the policies to cover all work incorporated in the building, and all materials for the same in or about the premises, and to be made payable to the parties hereto, as their interest may appear.

Art. XII. In case the owner and contractor fail to agree in relation to matters of payment, allowance or loss referred to in

Arts. III or VIII of this contract, or should either of them dissent from the decision of the architects referred to in Art. VII of this contract, which dissent shall have been filed in writing with the architects within ten days of the announcement of such decision, then the matter shall be referred to a board of arbitration to consist of one person selected by the owner, and one person selected by the contractor, these two to select a third. The decision of any two of this board shall be final and binding on both parties hereto. Each party hereto shall pay one-half of the expense of such reference. — The said parties for themselves, their heirs, successors, executors, administrators and assigns do hereby agree to the full performance of the covenants herein contained.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written, in presence of —.

\_\_\_\_\_  
\_\_\_\_\_

#### **5539. Agreement between contractor and subcontractor for work.**

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the said second party agrees, and hereby binds himself, to furnish all the materials and labor necessary to execute and finish the carpenter work of a row of five-story dwellings to be erected on the north side of — street, commencing from the corner of — street, according to the drawings and specifications prepared for the said work by —, architect (or by the party of the said first part if the builder designed his own plans), and which are signed by both parties to this agreement and made part hereof, for and in consideration of the sum of one dollar, paid to the said second party upon the signing of these presents, and of the sum of — dollars, to be paid as hereinafter provided, for the work to be done on each of said buildings. The said second party further agrees that the work shall be commenced at the time the said buildings have progressed sufficiently far to need said services and work, and that it shall be in strict conformity

to the drawings and specifications; that he will not in any way hinder or delay the other contractors on said buildings; and that the whole job shall be pushed to completion as rapidly as practicable consistent with its being executed in a workmanlike manner, and shall be completed on or before the first day of —, 19—; and in case of failure to complete the work at the date he shall be assessed for each and every day the work is delayed through the fault of said second party the sum of five dollars, to be retained out of any money that may be unpaid on this contract, or to be recovered by law, as liquidated damages and not as a penalty.

It is further agreed that the work shall be under the supervision and direction of —, architect (or builder), who shall have power to stop and reject any work or materials not in accordance with the drawings and specifications; and who shall have power, in case of failure by said second party to correct errors or to finish the work within the date aforesaid, or to employ other parties to finish the work, at the cost and expenses of said second party.

It is further agreed that, if the party of the first part shall, at any time, desire any changes in either the quantity or quality of the work, they shall be acceded to and executed by said second party without in any way violating or vitiating this contract; but the value of all such changes must be agreed upon, and indorsed upon this contract.

It is further agreed by the party of the first part that, in consideration of the faithful performance of this contract by the party of the second part, he hereby agrees to pay the said second party the aforesaid sum of — dollars for the carpenter work of each of said buildings in the following manner; that is to say, — dollars cash when the first tier of joists is laid in each house; — dollars cash when the second tier is ready for flooring; and the balance in cash (or negotiable note, or, if the party of the second part agrees to take one of the houses in payment, or a certain percentage in cash, as estimated by the superintendent or arbitrator of the quantity of work performed, or any other understanding, it should be set forth fully).

In witness whereof, we have affixed our signatures and seals,  
this — day of —, 19—.

Witness,

\_\_\_\_\_.

\_\_\_\_\_. (Seal.)

\_\_\_\_\_. (Seal.)

1. Sometimes security is required that the work will be faithfully performed, in which case the surety may be bound by making him one of the parties of the second part in the above contract, or by a special agreement.

2. See ante, vol. 4, § 3632.

#### 5540. Contract to build bridge.

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, county commissioners of — county, state of —, parties of the second part, witnesseth:

That in consideration of the covenants and agreements hereinafter contained the said first party hereby agrees to build, paint and erect in place, including all dirt fills, on or before the — day of —, 19—, for said county, a steel bridge with approaches across — creek in — township, said county, consisting of one — foot span, 175 feet of approach and the necessary dirt fills at each end of the bridge. The entire bridge to be built in accordance with plans and specifications on file in the — office of said county, and which plans form a part of this contract.

For which bridge and the construction thereof said second parties on behalf of said county agree to issue a warrant on the county treasurer payable to said first party in the sum of — dollars in full payment and satisfaction for the performance of the conditions of this contract by said party on his part to be performed. Said warrant not to issue nor payment to be made as aforesaid until second parties receive a certificate from the surveyor or civil engineer of said county certifying that said bridge is completed in compliance with this contract and said plans and specifications.

In witness whereof, etc.

\_\_\_\_\_.  
\_\_\_\_\_.

**5541. Agreement for specific repairs and improvements.**

This article of agreement between —, party of the first part, and —, party of the second part, witnesseth, that the said first party, carpenter and builder, does agree to put certain improvements upon house No. — street, viz.: to tear down back building, dig cellar, clear away all rubbish and dirt; to dig to the depth of main cellar, according to plan and specifications signed; underpin wall on the southeast side as requested by or agreeable to the owner, and necessary for the protection of his wall, and to build a four-inch wall against it with mortar and cement to the proper height. It is further agreed that said first party may use all the old materials as far as suitable, and furnish all others required to erect a three-story brick building, embracing a dining-room 16x21 feet; a pantry 7x9 feet; back stairway 2x6 feet clear, from cellar to third story; a kitchen of 14x13 feet in the clear, according to plan given and agreed upon; all the walls to be nine inches to top; a porch over the kitchen end 6x13 feet, with a railing, and covered with a tin roof; hot and cold water pipes and permanent washtubs in the kitchen; also sink for water in pantry, furnished with shelving, drawers and dumb waiter; bathroom complete, with a water-closet of approved pattern, hot and cold water pipes, and tub, all joists and flooring to be of proper strength and quality for a good job; covering the whole back building with the best quality of tin roofing and spouting complete; plastering every room with two coats of brown and one coat of white material in the best manner; putting centerpieces in the dining-room and library; painting all woodwork in a suitable manner, and coloring and graining the dining-room, also parlor doors and shutters; putting up a neat slate mantle in dining-room and library; continuing the front stairway up without platform so as to make level floors; putting in sliding doors with ground-glass panels, from parlor to dining-room; inside shutters in all front windows, the first-story ones paneled, and hung in boxes of ash, second and third stories to casings, painted, and secured by proper fastenings; all windows, doors and shutters of proper size and quality; finally, building and completing for occupation in the best manner a back building according to



plans, in as short a time as possible to make a good job; repairing pavements and fences; the party of the second part agreeing to make payments as the progress of the work will warrant, leaving one-fourth to be paid after completion of the entire job. The consideration of this contract is to be sixteen hundred dollars, and there are to be no extra charges whatever, unless agreed to in writing and attached hereto.

Witness the hands and seals of

\_\_\_\_\_, builder.

\_\_\_\_\_, owner.

**5542. Contract for installation of fire-proof vault.**

This agreement made and entered into this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between \_\_\_\_ safe company of \_\_\_\_, hereinafter referred to as the contractor, and the \_\_\_\_ company of \_\_\_\_, hereinafter designated as the purchaser, witnesseth:

That said contractor in consideration of the sum of \$\_\_\_\_ to be paid by said purchaser in the manner hereinafter described, and in consideration of the further covenants and agreements hereinafter contained, agrees to furnish all materials used and labor necessary to the completion in the most thorough and substantial manner of one fire-proof vault, to be installed and placed by the said contractor in the building owned by said purchaser and situate at No. \_\_\_\_, in \_\_\_\_ street, in the city of \_\_\_\_, state of \_\_\_\_.

Said fire-proof vault to be of dimensions and materials as follows, to wit: (here state dimensions and materials to be used).

It is further agreed by said contractor that all such material to be used in the construction of said safe is to be of the highest grade of commercial or special stock made for such purpose, and the work necessary for the completion of said safe is to be executed in the most thorough and workmanlike manner. That all dials, bolt handles, bolt work and hinge tips are to be nicked and polished, the interior of said vault to be finished in light color, and the exterior to be finished as purchaser may hereafter designate.

Said purchaser hereby agrees to provide and erect the foundation and substructure upon which said vault is to be placed, and

is to afford all necessary rights of way in and to its premises for carrying on the work and operations necessary in the erection and installation of said safe by said contractor. And said contractor further agrees to use all necessary care and diligence in the prosecution and erection of the said safe to the end that the least possible obstruction or delay may be caused in connection therewith.

Said contractor further agrees to complete the erection and installation of said safe on or before the — day of —, 19—.

Said purchaser agrees that upon the completion of said safe on or before the above date in accordance with the terms and specifications of this agreement, to pay to said contractor the said sum of \$—.

In witness whereof, the parties hereunto have set their hands and seals this day and year above written.

**5543. Contract under seal between corporation, or other public body, and builder for erecting building.**

This agreement, made this — day of —, between —, contractor and builder, of the one part, and the — corporation, organized under the laws of the state of —, of the other part,

Witnesseth, that whereas the said corporation are desirous that a building should be erected on the piece of ground situate —, etc., and have caused to be prepared plans, drawings, elevations and sections of the said — building, etc., and a specification of the work for the erection of the same by —, their architect, and the said plans, drawings, elevations, sections and specifications have respectively been approved of and signed by him and the contractors, and are annexed by way of schedule to this agreement;

And whereas the contractors are willing to undertake the execution of the said work for the sum of — dollars, and subject to the covenants and conditions herein contained:

Therefore, in consideration of the premises, the contractor agrees with the said corporation, and the said corporation hereby covenants with the contractor, as follows:

1. The contractor will, at his own proper costs and charges, forthwith begin, and in an expeditious and workmanlike manner,

erect, build and finish the said building for the said sum of —— dollars, agreeably to the said elevations, plans, drawings, sections and specifications aforesaid, and under the direction, and to the satisfaction, of the said ——, or other architect for the time of the said corporation, and in accordance with such explanations and directions as the said architect shall from time to time give for the purposes of the work on or before the —— day of ——.

2. The contractor will find, furnish and provide at his own expense all materials incident or necessary for so building the same, all the said materials being the best of their several kinds, and to be approved of by the said architect of the works for the time being of the said corporation; and also will provide at the like expense all proper scaffolding, timber and plant for the said work, and erect and keep a proper bound or fence around the same, of the height of —— feet or more, during the whole progress, and until the said buildings and work shall be complete.

3. If the corporation shall at any time or times hereafter think proper to direct any alterations or deviations to be made in the form, or quantities, or elevation, or plan of the said building, or other the work hereinbefore agreed to be done, before the same shall be performed, the corporation shall give written instructions under seal for such alterations or deviations, and the same shall not in any wise make void, impeach or prejudice these presents of the said contract. But then, and so often, and in every such case, the contractors shall attend to and pursue the said directions as they shall in that behalf receive from the corporation, and execute and perform the same in a proper and workmanlike manner; and in every such case it shall be referred to the said architect for the time being of the said works to consider, and by some writing under his hand to determine, how far such alterations or deviations will, on the whole, be a saving or additional expense to the contractors; and if the same shall appear to be a saving, the amount thereof shall be abated out of the last instalment or payment of the said sum of —— dollars agreed to be paid for the said work as herein provided; but if the same shall occasion an additional expense, then the amount thereof shall be ascertained by the said architect, and be paid to the said

contractor by the corporation over and above the said sum, in the same manner and at the same time as hereinafter is expressed for the payment of the ultimate balance of the said sum of — dollars; but the contractor shall not be considered to have authority for any such alteration or deviation, or the right to make any claim for the value or otherwise in respect hereof, without such written instructions so under seal as aforesaid.

4. If any of the materials hereinbefore agreed to be provided or employed by the contractor, in or about the works of the said intended building, shall be found by the said architect of the said works for the time being to be unsound, defective or of bad quality, then, and in every case, and notwithstanding a certificate may have been previously given by the architect for the time being, all such materials shall be forthwith removed by and at the expense of the contractor, and other materials of a better and good and fit quality and kind in all respects, and approved of by the said architect for the time being, shall be immediately provided and made use of in the place and stead of such as shall be deemed bad or defective.

5. If any part of the said building or work shall be found by the said architect to be defective in point of workmanship, disposition of the materials, or otherwise howsoever, during the progress or after the performance of the same, then and in every such case, and notwithstanding that a certificate may have been previously given by the architect for the time being, such defective work shall be forthwith pulled down and demolished at the expense of the contractors, and immediately thereafter rebuilt in a more complete and proper and workmanlike manner, in all respects to the satisfaction of the said architect of the said works for the time being.

6. If the contractor shall not, after — days' notice given to him or his foreman by the said architect of the said works for the time being of such unsound material or materials deemed improper, remove the same, it will be lawful for the said architect to cause the same to be removed to such place as he may think proper, without any liability on his part, or on the part of the corporation, for any loss or damage which may happen to the

said materials so removed as aforesaid, and to cause proper materials to be substituted in lieu of the materials which shall be objected to as aforesaid; or, in case of any part of the said works being improperly executed as aforesaid, to cause the same to be demolished and re-erected by such workmen as he shall think fit: and in either of the said cases the contractor shall and will pay all such costs, charges and expenses as shall be incurred in the removal of such materials as aforesaid, and in the substitution of such materials in lieu thereof, or in the demolition and re-erection of all such parts of the said works as aforesaid, or the same shall be deducted from the balance which shall remain of the said sum of — dollars as liquidated damages.

7. The contractor shall, upon the completion of the said building and works, remove and carry off all the scaffolding, board and fencing erected for performing the same, and leave the whole of the said works in a perfect and proper state and condition.

8. The contractor will, during the whole time of building, and until the completion of the said intended building and works, give due personal attention to the execution thereof, in order that the same be carried on, executed and performed in a proper manner in every respect, and shall not employ any subcontractor for the execution of the same, or any part thereof, without the previous authority in writing of the corporation.

9. The whole of the said intended building and works shall be completely finished and fit for use and occupation on or before the said — day of — now next ensuing; and if it shall happen that the said intended building and works shall not be completed and finished fit for use and occupation within the time aforesaid, the contractor shall and will forfeit and pay unto the corporation the sum of — dollars per week, as and for ascertained and liquidated damages and not by way of penalty, for every week from and after the said — day of — until the same shall be finished and completed; which sums shall or may be retained and deducted out of so much of the said sum of — dollars as for the time being shall remain unpaid, or be recovered and recoverable from the contractor by the said corporation by action or otherwise.

10. The said corporation shall and will, if the contractor duly executes and performs all and every the covenants and agreements on his part to be observed, done and performed, according to the true intent and meaning of these presents, pay or cause to be paid to the said contractor the said sum of — dollars for completing and building the said intended building and works aforesaid in — several instalments, at the times and in the manner following: that is to say, the first instalment or sum when the brick-work of the said building shall be carried up level with the one-stair floor; the second instalment when (state particular period); the third instalment or sum when the roof of the said building shall be completely covered in; and which said instalments or sums it is hereby agreed shall respectively be of an amount equal to (three-fourths) parts of the value of the works which at the said respective times or periods shall have been performed, as certified in writing under the hand of the architect for the time being of the said corporation; and the fourth or last instalment or sum (in completion of the said sum of — dollars), and also such further or other sum as may have been occasioned by any such alterations or deviations from the original or present plan of the said buildings or works as aforesaid, within — calendar months next after the said buildings and works shall be wholly completed and perfected according to the tenor and true intent and meaning of these presents. But no payments as aforesaid shall be made to the contractor except on the certificate in writing of the architect for the time being of the said corporation that the said works have been satisfactorily completed at the said respective periods.

11. If damage by storm, tempest, accidental fire or other inevitable accident shall happen to the said works, which it shall not be in the power of the said contractor to prevent, the same shall be made good and repaired at the expense of the said corporation; but if such damages shall have happened or be occasioned by or through any neglect or default of the said contractor in any wise, then the same shall be immediately repaired and made good at his own proper cause and expense.

12. Notwithstanding any certificate that may have been given

by the said architect for the time being, if any bad work or defect, contrary to the terms of this agreement, shall be discovered within after the completion of the said works, no further payment, if any due, shall be made to the contractor; and the contractor shall make good all such defective or bad work, in accordance with the stipulations herein contained, within — days after notice in writing from the corporation, or in default the corporation may do so, and the cost and expenses incurred in either case shall be paid by and be recoverable from the contractor. (Here add, if deemed advisable, conditions as to foremen, authority, general superintendence, delays caused by strikes, inclement weather, and property in materials, arbitration, etc.)

In witness whereof, the said — have hereunto, etc.

\_\_\_\_\_  
\_\_\_\_\_

#### 5545. Conditions for architectural competition, for construction of building.

For construction of —.

1. Architects willing to compete may send in plans and specifications before — to —, from whom any further information may be obtained.

2. All except the working drawings of details on a large scale are to be on the scale of  $\frac{1}{8}$  inch to a foot, and the longest vertical lines in the perspective drawings are to be on that scale also. The drawings are to be made from as distant a point of view as possible (which distorts them less), and there are to be no figures or other imaginary objects in the foreground; and they are either all to be or all not to be colored. All depths of windows, and other shadow-casting parts, and all thicknesses, are to be accurately represented in the perspective drawings, and figured legibly on the plans and sections, and all inscriptions on the drawings are to be written in plain letters without lines.

3. No part of the work that can be defined by drawings or specification is to be provided for by a sum of money named in the specification.

4. The plans and specifications are to include (according to local circumstances) all the necessary drainage, heating (there

are generally special tenders for heating apparatus), bells, grates, chimney-pieces, closets and shelves, provision for gaspipes, boundary walls and pavements and everything, except furniture, that will be requisite to fit the building for its purposes.

5. The estimate for the whole work is not to exceed \$—, but any architect who considers this insufficient for the proper execution of the work required may say so, and send in his own estimate either before or with his plans.

6. The committee will not be bound to accept any plan, nor to proceed with any one which they do accept, unless they find that a contractor with sureties in one-third of the amount of the estimate to be approved by them will undertake it for that sum. If no such contract can be made to their satisfaction, the whole proceeding is to be void, and the architect is to have no claim upon them.

(The conditions of the payment, either for drawings or employment, may, of course, be anything the employer pleases to announce.)

#### 5546. Special subcontractor's stipulations.

This agreement made this the — day of —, 19—, by and between —, contractor of the city of —, state of —; and —, subcontractor, of the city of —, state of —. The said contractor and subcontractor hereinbefore mentioned hereby agree to the following stipulations and covenants:

1. The said —, subcontractor, will, within the time stipulated in the original contract made with — by the contractor, faithfully execute the — work, and will provide all materials for the same, and will complete the entire job in all respects in accordance with the plans and specifications annexed hereto, and signed by the said —, subcontractor.

2. The said —, subcontractor, will save harmless and keep indemnified the said —, contractor, from all loss, cost, damages, claims, demands or expenses of any kind whatsoever which may be sustained by the said —, contractor, by reason of any delay or default, or any breach of this contract, on the part of the said —, subcontractor.

3. If the said —, subcontractor, shall not proceed with the



said work in accordance with this agreement, and to the satisfaction of the architect or engineer for the time being of the said employer, of which delay or default the said architect or surveyor is to be the sole judge, it shall be lawful for the said —, contractor, upon such delay or default, to employ such other contractor or workmen, and to supply all such materials as may be necessary in order to complete the said work in accordance with the said original agreement, and to deduct the costs and all other expenses in any way caused by such delay or default, from the amount (if any) which shall be payable to the said —, subcontractor, by virtue of this agreement; and in the event of that amount being insufficient, the said —, subcontractor, will pay to the said —, contractor, any deficiency, and all costs and expenses attending the recovery of the same action or otherwise.

4. The said —, contractor, will, in consideration of this agreement, pay to the said —, subcontractor, the sum of \$—— when the architect or engineer for the time being of the said employer shall have certified in writing that the said — work has been finished and completed to his satisfaction (or stipulate payment by instalments, if desired).

5. No extra work shall be charged to or paid for by the said —, contractor, except such extra work as may be ordered by the said —, contractor, in writing; but such order shall not operate so as to extend the time beyond the — day of — to be allowed as aforesaid for the completion of the work.

6. The said —, subcontractor, shall pay to the said —, contractor, the sum of \$——, as liquidated and ascertained damages, and not by way of penalty, per day, for each day after the — day of — that the said — work shall not be finished or completed, until completion as aforesaid; and it shall be lawful for the said —, contractor, to retain the said sums out of moneys payable to the said —, subcontractor.

In witness whereof, etc.

#### 5547. Form of specification.

Specification of the work to be done and the materials to be furnished in the erection and completion of the — police station for the police commissioners of the city of —, according

to the plans and drawings therefor, prepared by —, the architect.

Dated — of —, 19—.

General conditions. The contractor is to provide all material (new and of the best quality, unless otherwise specified), and is to execute and complete the various works in the best and most workmanlike manner, as set forth in the following specification and its accompanying drawings; as also according to the directions, and to the entire satisfaction, of the architect. The contractor is to abide by and comply with the obvious intent and meaning of the drawings and specification, and is not to avail himself of a manifestly unintentional error or omission, should such exist; nor fail to repeat and make perfect any parts obviously so intended, though singly shown or insufficiently expressed, for the sake of brevity or needless repetition. In all cases of reasonable doubt as to the drawings he is, unless otherwise advised by the architect, to adopt figured dimensions thereon in preference to the scales or proportions thereof; but in all cases the intended true dimensions of the grounds and premises in preference to either.

Dispute as to details. Should any dispute arise, or anything require explanation or further detail, the contractor is to apply to the architect, allowing him a reasonable time to supply the same; and is to accept as final his interpretation of the drawings and specification, and is to comply with any further details given as part of the contract.

Examination of premises before tender. The contractor shall be held to have examined the premises and site so as to compare them with the drawings and specification, and to have satisfied himself of their accuracy, before the delivery of his proposal, as no alterations will be subsequently made in his behalf in the event of any error being discovered.

Copies of contract, etc. The original contract drawings and specification are to remain in possession of the architect for his future reference. The architect will provide the contractor with free copies of all contract drawings, and the specification required for his own use. These are to be carefully mounted and pre-

served, and accessible at all times to the architect, or the owners, during the progress of the work, and when the building is completed they are all to be returned to the architect at the time he, the said architect, issues the certificate stating that the contractor is entitled to his last payment of money; and if lost, stolen or destroyed, they are to be replaced at his (the contractor's) own expense; nor shall any allowance be made him for any delay that may thereby occur.

Defective work. Should any of the work or materials be considered by the architect unsound or defective, the contractor shall, after twenty-four hours' written notice, remedy or remove the same, or in default thereof the architect may thereupon cause the same to be taken down or removed, as the case may require, and replaced by proper material and labor, at the expense of the contractor.

Deviation. The architect shall be empowered to deviate from the drawings and specifications, or to make such alterations either of omission, deduction or addition therein as he may think fair, and such alterations shall not invalidate the contract; but their value shall be decided and agreed upon between the contracting parties before the work is proceeded with, and such value being added to the contract-price, or deducted therefrom, as the case may be. The contractor himself, however, shall not be empowered on any pretense, save the sanction of the architect, to deviate from the drawings and the specification, or to claim for extra work, save for such as may have been ordered in writing by the architect. Detail drawings given to the contractor during the progress of the work are not to be regarded as extras to, or variations from, the original contract, but are to be considered as simply explanatory of the work already stipulated for in the said contract, unless the contractor shall, within a reasonable time after their delivery, and prior to the execution of the work, make objection in writing to such detailed drawings, and obtain from the architect a written order or memorandum, to append to such detailed drawings, recognizing any alleged extra work or material claimable thereon.

Architect to decide. The decision of the architect shall be final

and binding on all parties concerned, when given on all questions of doubt as to the tenor and intention of the drawings and specification.

**Bonds.** The contractor is required to execute a sufficient bond with sureties for the due performance of the works and the completion of the same inside of —— months from the date of the contract, and also a good and sufficient bond to protect the owners against mechanic's or other liens under the laws of the state of ——.

**Tearing down old buildings.** The buildings now on the premises are to be taken down in the most careful manner, at the entire risk of the contractor, the material carefully cleaned, sorted and stacked for reuse in the new building, when not in conflict with the provisions of this specification. The old joists, if perfectly sound and properly re-cambered, may be used for the first story of the new building, or new 3 x 12-inch of the best Georgia yellow pine.

**Old cesspool.** The contractor agrees to clean out any cesspool or pit now on the premises, filling the same with clean earth, well rammed down and then covered with North River bluestone flags cemented in position.

**Excavations.** The contractor shall dig out to the proper depth for a cellar, —— feet from floor to floor under the entire building, for the trenches for drain and other pipes, and for the various foundations to walls, piers, etc., sufficiently wide to receive the footings as shown on the drawings; regrade the pavement as shown, and remove all superfluous rubbish and earth from the premises, scrub the floors at the completion of the building. Should it be necessary to excavate to a depth greater than required by the drawings to get a solid foundation, then such additional excavation, and consequent greater depth of wall, is to be charged for by the contractor, at prices which must be named in his bid, viz., at so much per cubic yard for excavation, and so much per cubic perch for foundation walls, all materials and labor included.

**New cesspool.** The contractor agrees to dig the cesspool (—— feet in diameter when completed) where shown, to a full and

flowing stream of water in a bed of coarse sand or gravel; cover it with granite or North River flags, with a man-hole through the center of it, and cover with — x — x — stone. Soil or other pipes to enter the cesspool directly under the slab covering.

Foundation walls or footing stones. The contractor agrees to put in bottom course of large flat stones (bedded — inches below cellar floor), footings to all walls, etc., projecting in all cases — inches on each side of the wall or pier built on them; at least one-third of these footing stones are to extend in one piece entirely across the trench, and under the corners and piers between the windows (here to follow other particulars).

Mortar. The contractor agrees to bed the footing stones in mortar, composed of one part cement to two parts coarse, sharp sand, used when fresh.

Granite work. (Particulars as to stone trimmings.)

Front steps. The contractor will provide steps to front doorways as shown. All granite to be fine bush hammer dressed, jointed and set in the best manner, and firmly anchored and clamped where requisite with strong galvanized wrought iron anchors or clamps, properly set in with lead, or built into the walls.

Curbing alleys and streets. (Particulars.)

Brick-work. The contractor agrees to carry up all the walls, piers, stack, flues, etc., to the requisite heights, and of the thickness shown or figured on the drawings. All angles and reveals must be carried up true and plumb. Face the inside walls of the second, third and fourth stories with well-burned bricks, and the south and east walls with the best quality of hard dark-red bricks of uniform color; face the north wall with the best sand bricks. Face the front, etc., wall with the best quality of dust-pressed bricks. Sample to be left with the owner when the bid or tender is submitted. No salmon or soft bricks are to be used in any part of the work below the first story window-sills, etc. Cesspool to be walled up with hard-burned or black bricks. All pressed bricks to be laid with a thin and perfectly cut joint, cleaned down, oiled and penciled; lay all other face bricks with thin struck joints. Arches on the front to be formed with long arch-brick. All bricks to be hand-made.

Flues. (Here follow full and definite particulars as to flues for hot-air pipes, ventilation, foul air and smoke.)

Mortar. (Here particulars as to the ingredients and quality of mortar to be used for various portions of the work.)

Paving. (Particulars as to paving yard, alley and street.)

1. See ante, vol. 4, ch. 97.

#### 5548. Agreement with architect.

This agreement made this —— day of ——, 19——, by and between —— of the city of ——, state of ——, architect; and —— of the city of ——, state of ——, employer.

1. Said architect agrees to prepare sketch plans, elevations, and sections of the intended building, having regard to the proposed cost, so that a contract may be made for it, including fixtures and fittings, warming, ventilating, lighting, boundary fences, lodges and every other work necessary to render the building fit for occupation, except furniture, for the proposed amount.

2. If the employer abandon the intention of executing the building, the said architect shall be entitled to a sum to be fixed beforehand, and to the return of his sketches (but see 6 and 12).

3. If the sketches are approved, with or without modification, and the employer desires to proceed, the said architect shall, by a day named, prepare working drawings and specifications for competition by contractors.

4. The drawings and specifications shall be full and complete, so as to enable the said employer to enter into a contract with a responsible contractor.

5. If the most approved tender exceeds the amount proposed, the said architect shall, if required by the said employer, revise his plans so as to bring the expenditures within the prescribed limit.

6. The plans and documents relating to the works shall be the property of the said employer (i. e. at once, not merely after the work is done), and the said architect shall make, at his own expense, all copies of them necessary for the conduct of the works.

(Provisions 7 and 8 are as to certificates and clerks.)

9. The said architect will be at liberty to vary architectural details, provided such variations do not involve extra cost, but

shall on no account incur increased expenditure without sanction of the said employer in writing.

10. If any additional or substituted works become necessary during the execution, the said architect shall furnish the plans, etc., as soon as possible.

11. The said architect's remuneration shall be a fixed sum to be agreed upon beforehand: the one-third of it shall be paid to him on the execution of the contract; another third when half the contract-price has been paid to the contractor, and the rest when the last payment has been made to the builder.

12. If, after the working drawings have been made, the said employer does not proceed, the said architect shall be entitled to a fixed sum, to be agreed upon beforehand, and the plans, etc., shall belong to the said employer. Or, if the said employer proceeds only with a part of the works, the said architect shall be entitled to a proportionate part of the remuneration mentioned in paragraph 11, in addition to a proportionate part of the sum mentioned in this article in respect to the works abandoned.

13. The said architect shall be entitled to nothing more except for alterations and additions made by the written authority of the said employer.

14. If the said architect dies, or becomes incapacitated, he or his representatives shall hand over to the said employer all plans and papers relating to the works, and shall be entitled to such equitable proportion of the unpaid part of said remuneration as may be agreed upon.

It may also be stipulated that "no rules of architectural societies shall be binding upon the said employer."

In testimony whereof, etc.

1. See ante, vol. 4, ch. 96.

#### 5549. Contract for construction of railroad.

This agreement made and entered into this — day of —, 19—, by and between — railroad company, party of the first part, and —, party of the second part, witnesseth:

That for and in consideration of the payments and covenants hereinafter mentioned to be performed and fulfilled by the party of the first part, said party of the second part does hereby agree

and bind himself, his heirs, executors and administrators to execute, construct and finish in every respect, in the most substantial and workmanlike manner, and to the satisfaction and acceptance of the chief engineer of said first party all the work or that part of the ——— railway from the station ——— to station ——— on the located line of said railway (a distance of about ———) in the state of ———, for which prices are hereinafter affixed according to the directions of the engineer, the printed specifications and regulations of the said first party which second party has examined and fully understands, and are made a part of this agreement, on the following conditions;

The work shall be commenced ——— days after the execution of this contract and shall be prosecuted with such force and means as will, in the opinion of the chief engineer of said first party, insure its completion on or before the ——— day of ———, 19—, and said work shall, in all particulars, be made to conform to the plans, specifications and directions of the chief engineer in charge of the work, by whose measurements and calculations the quantities and amounts of the several kinds of work performed under this contract shall be determined, and who shall have full power to reject and condemn all work or materials which, in his opinion, do not conform to the spirit of this agreement, and shall decide every question which may or can arise between the parties relative to the execution thereof, and his decision shall be conclusive and binding upon both parties hereto, and the second party agrees to progress the work at such time or times, in such manner, and at such particular points on the line of said work as said chief engineer, his assistant or party of the first part shall direct.

The several stipulations of this contract shall be performed in such manner that the party of the second part shall be relieved from the immediate charge and responsibility of the work, and no part thereof shall be transferred or sublet to other parties, unless by the sanction and approval in writing of said first party or said chief engineer in charge of the work.

It is understood that said second party is the owner in his own name and right of ——— teams, and that they are free of all encumbrances, and said second party hereby promises and agrees



not to sell or assign any of said teams, or any interest in the same, to any other person, but to keep the said teams constantly engaged upon the said work until the same is completed and a final settlement made, unless released from such obligation of said first party, made in writing.

If any foreman or laborer employed by second party shall in the opinion of said chief engineer, or said party of the first part, or its superintendent, execute his work in an unfaithful or unskilful manner, or in any respect prove remiss or inadequate to the performance of his duty, or disrespectful or riotous in his conduct, he shall forthwith, by direction of the said engineer or said first party, or its superintendent, be discharged, and no person shall be employed on the work in the capacity of foreman or overseer, who has been previously discharged for either or any of the above reasons.

The said party of the second part agrees not to keep, or suffer to be kept or used, any ardent spirits in or about any house or tenement building already occupied or to be occupied by him, or by any workman in his employ, or by any boarding-house keeper under him, on or near said work, and to discharge from his employment any workman, laborer or boarding-house keeper who is guilty of a breach of this agreement, when required to do so by the engineer of said first party or the said first party.

Said second party hereby promises and agrees not to cut down, appropriate to his own use, injure or destroy any timber, outside of the right of way of said railway company, or to put up any camp or building without permission of the owner of the land on which built, and not to permit any fires to escape from said right of way and to remove all brush and timber fallen outside of said right of way, and if, from any of these causes damage shall be done or permitted by the party of the second part or his men or subcontractors, it is understood that the first party or its superintendent shall pay the amount of such damages, and retain the same from the value of the work done under this contract, or if said damage is not ascertained when work is completed, said first party may hold an amount of money otherwise due sufficient to pay the damage when the amount is known.

Said second party further promises that for any timber on the right of way for which any person, firm or corporation pays stumpage, the amount of such stumpage shall be paid by said second party to first party or retained from any money due or to become due to said second party under this contract.

It is further agreed and understood that the said first party or any subcontractor or man in their employ shall be permitted to go upon any part of the right of way covered by this contract, and, without objection or any bill of damages for the same, be permitted to take timber suitable for piles, for use in bridges or culverts, and upon being notified that any timber is suitable and required for such use, the said second party shall reserve such timber standing, or cut it up in lengths as directed.

To use all roads for hauling materials, and ways to and from the work, also all grounds for the deposit of materials (except for waste or spoil banks and such other material as may be reserved for first party), the erection of shanties or yards for the performance of work to be procured and paid for by the party of the second part at his own expense.

It is mutually understood and agreed between said parties that the first party shall have the right at any time to change the location of the line and the establishment of grades, and it is hereby mutually agreed that no extra charge will be claimed or allowed on account of such changes in the line or grades, the prices herein mentioned being considered as full compensation for the various kinds of work agreed to be performed.

Whenever work is required to be done which is not now contemplated or covered by the prices herein mentioned, the party of the first part or its superintendent shall fix such prices for the work as it shall consider just and equitable, and said parties shall abide by such prices, provided the party of the second part enter upon and commence such work with the full knowledge of the prices so fixed by the first party, but if the party of the second part declines to execute the work at the prices fixed by the first party, then the party of the first part may enter into a contract with any other person or persons for its execution the same as if this contract had never existed.

And if any extra work not provided for in this contract is performed by the second party without protest or notice in writing to the first party, before such prices shall have been fixed for such work, then the said first party shall estimate the same at such prices as it shall deem just and reasonable, and its decision shall be final; and the second party shall accept of such prices in full satisfaction of his demands against the party of the first part for such extra work; but nothing shall be deemed extra work that can be measured and estimated under the terms of this contract.

If the party of the second part refuse or unreasonably neglect to remedy any imperfections which may be pointed out by said engineer of said first party or by its superintendent, or in any manner violate the conditions of this contract, so that, in the judgment of the engineer or the said first party, there shall be just grounds for apprehension that the work will not be completed in the manner and within the time specified, then it shall be the duty of the first party to serve a notice upon said second party setting forth the grounds for his apprehension, and specifying the manner, together with a reasonable time in which said second party may cause such grounds to be removed, and if, at the expiration of such time, such grounds of apprehension be not removed, then full power and authority is hereby mutually vested in said first party, or its superintendent, to declare this contract forfeited; and on such declaration being given in writing by the said first party or its superintendent to the second party hereto, this contract shall terminate immediately, and the said party of the first part may forever retain and recover the full penalty of any bond given by second party to first party, on account of the consideration for damages which it may have sustained by reason of the forfeiture of the contract; or, as an alternative to a declaration of forfeiture, the party of the first part shall, on the report of its chief engineer that apprehensions are entertained that this contract will not be completed in the time and manner herein stipulated, have the right to take such measures as may be deemed by it necessary to insure the completion of the work in the time and manner herein stipulated, and to deduct from the monthly and final estimates of work done under this contract such sum or

sums as may be required to defray the expenses of such measures. Among the measures which under such circumstances may be resorted to are the execution by its own agents of such portions of the work as the said first party may select, or the requirement that the party of the second part shall provide for and employ in the most efficient manner such additional men, carts, teams, etc., as the party of the second part may furnish; in which case said party of the second part agrees to employ said men, teams, carts, etc., in the manner directed by said first party, who shall have the right to retain from the estimate an amount sufficient to pay said men, teams, carts, etc.

It is further agreed and understood that the said second party will, during the construction of said work and wherever the route of the same is traversed by public or private roads, keep open and maintain in safe condition commodious passing places; that where said route passes through farms he will keep up such temporary fences as will be necessary for the preservation of crops or the restriction of cattle; that he will not take or deposit earth or other material from or on any place or places outside the right of way of first party without the direction or consent of its chief engineer, or his assistant, given in writing, and that he will hold said first party free and harmless from all loss, cost of damage, or claims therefor to persons or property arising from or growing out of any acts or omissions of any person or persons employed by him or under him, or by or under his agents or subcontractors in the prosecution of said work or any part of it.

It is further understood and agreed that in case there shall be any unsettled claims for damages, when the final estimate is returned, then and in such case the party of the first part may retain out of the money due the party of the second part a sum equal to the amount of damages so claimed and remaining unpaid, and the cost of settling the same, until said claims are determined by legal process or otherwise, and the amount so determined and the cost added thereto, shall be paid out of the money so retained, and the balance of the money, if any, shall be returned to the said second party and it is also mutually understood and agreed that whenever in the opinion of the party of the first part it may be nec-

essary to secure the payments for labor or bills, for which first party may become liable, then the party of the first part is hereby authorized to pay said labor and bills in the manner that the parties of the second part have agreed to pay the same, and all money so paid shall be deducted from the amount which may be due and payable or become due said second party.

It is further understood and agreed that the first party shall retain on each monthly payday from whatever sum may be due second party for work performed under or covered by its contract a sum equal to one and one-half per cent. thereof, to be applied by the party of the first part on the purchase of a policy contract with the ——— casualty company of ———, which provides indemnity for such amounts for which he, the party of the second part, may become legally liable by reason of any accident to any of his employes up to a limit of ——— dollars in any one accident to one person, and which provides for the defense, at the cost and expense of that company, of any suit which may be brought to enforce any claim for damages, on account of injuries sustained by any workman.

It is further mutually understood and agreed between said parties that the party of the second part shall, without extra compensation, deposit all excavations upon the road in embankments where embankments are needed, provided the extreme haul shall not exceed ——— feet, and all borrowed material for embankments shall be taken from such places as may be directed by the chief engineer or assistant, provided no borrowed material shall be hauled a greater distance than ——— feet.

It is further mutually understood and agreed by the parties hereto, that if the nature of the ground along the line of roadway is such as to necessitate the hauling of material a greater distance than ——— feet, the chief engineer or his assistant may so order, and said second party shall be paid for, such amount overhauled ——— cents per cubic yard per hundred feet for such overhaul.

And the said first party in consideration of the fulfilment and performance of all the stipulations contained in this contract by the second party to be by said second party fulfilled and performed, and whenever said work shall have been, in the opinion

of the chief engineer, completed and finished in every respect, and performed agreeably to the various stipulations and specifications of this agreement, and the said chief engineer shall have furnished the said first party a certificate of the fact under his hand, together with his estimate of the quantity of the various kinds of work done by said second party, under this agreement, which estimate shall be final and conclusive between the parties hereto, will pay to the said second party within —— days after this certificate and estimate shall have been furnished by said chief engineer, the sum of —— dollars (or estimate price per cubic yard, etc.).

It is further agreed by the party of the first part that estimates shall be made during the progress of the work, on or about the first of each month, and that payment shall be made by said first party, upon the estimate and certificate of said engineer, approved by said first party, on or about the —— day of each month, or as soon thereafter as said estimates can be acted upon, for the amount and value of the work done and materials furnished during the previous month, —— per cent. being deducted and retained by the said first party until the whole work has been entirely finished and completed to the satisfaction and acceptance of said chief engineer, and he shall have furnished a certificate to that effect to said first party.

In witness whereof, the said parties of the first and second parts have hereunto set their hands and seals this day and year above written.

#### 5550. Contract for drilling oil or gas well.

This agreement made and entered into by and between ——, party of the first part, and ——, party of the second part, witnesseth:

That in consideration of the covenants and agreements hereinafter contained said second party hereby agrees to drill one well for oil or gas any place upon the southwest quarter of section ——, township of ——, county of ——, state of ——, that the said first party may designate, and to drill to the rock, unless a good quantity or flow of oil or gas is discovered before reaching said rock, or otherwise at the option of the first party. The said

second party agrees to do the drilling, and to furnish all the labor, tools, implements, machinery, fuel, water, etc., necessary for said drilling, and to do said drilling in a good workmanlike manner.

Said first party is to furnish all tubing, casing, and drive-pipe for said well, and when said well is completed agrees to pay second party one dollar per foot for drilling said well, provided the drilling of same was done in a good and workmanlike manner.

The said second party agrees to commence said work of drilling said well on or before the — day of —, 19—, and complete the same on or before the — day of —, 19—, unavoidable delays excepted. In case gas or oil is found in said well to justify using same, second party is to properly tube and pack said well, for which work he shall receive an additional sum of — dollars, to be paid by first party, who shall also pay for material used in tubing and packing said well.

In witness whereof, etc.

#### 5551. Contract to drill and equip water well.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That said first party does hereby agree to drill and properly equip a water well, and to furnish and erect a windmill for supplying power to pump said well, also to furnish and install water tanks, lead pipes and connections for supplying water for stock and domestic purposes on the premises of second party of — township, — county, state of —.

That said well shall be a drilled or tubular well with inside casing of three-inch galvanized iron pipe from the top of the well to the bottom thereof, and terminating below in a screen two and one-half inches in diameter and four feet in length, which screen shall be located in the sand, gravel or other deposit from which the flow of water is derived.

That in case a subterranean vein, stream or deposit of water is found of sufficient flow or quantity to justify first party in doing so he shall equip said well for pumping water by putting in said inside casing and locating said screen as aforesaid and

placing a suitable valve at the bottom of said well with connections by sucker rod to an iron pump attached to the upper end of said casing.

That said well shall then be pumped continuously for a period of — hours and if a full flow of water shall come from said well at each stroke of said pump during the time aforesaid, the said well shall be deemed ample and satisfactory by second party and he is thereby bound to accept same, and second party hereby agrees, in consideration of drilling and equipping said well as aforesaid by first party, to pay first party therefor at the rate of \$1.50 per foot, for each lineal foot measuring from the top of said pump to the bottom of said well.

That said price shall be in full payment for the drilling and equipping of said well and for the furnishing by first party of said pump and all the material in said well.

It is further understood and agreed by and between the parties hereto that in case the first party fails to find a vein or flow of water in sufficient quantities to meet the requirements of this contract that he shall receive no compensation from second party for any work done or material furnished in the effort to find water or make a well as provided for herein, but first party shall remove all machinery, tools and material from said premises, and fill any excavations made thereon by him.

It is further agreed that in case a well is made on said premises, such as is accepted by the second party, the first party is to erect a "Star" windmill and derrick over said well and properly connect same so as to supply power for pumping said well; also the first party is to furnish a galvanized water tank of — barrel capacity located a distance of two hundred feet from said well, and to properly connect said tank by a one-inch lead pipe to said well.

That said tank shall be placed on suitable foundation and equipped with automatic valve for shutting off the water and for stopping and starting said windmill.

That after said tank, windmill and derrick are properly installed and working to the satisfaction of the second party, he, the said second party, shall pay to first party the sum of —



dollars, which payment shall be in full satisfaction for said tank, windmill and derrick and their connections, together with the labor for installing same.

That said party shall begin said drilling of said well on or before the —— day of ——, 19—, and complete same within —— months thereafter, unavoidable delays excepted.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_.  
\_\_\_\_\_.

1. See ante, vol. 4, § 3691.

## BUILDING AND LOAN CONTRACTS.

5555. Application for loan to board of directors of a saving and loan association.

—, —, 19—.

I (or we) — do hereby make application for a loan of \$— on — shares of stock in Class C, with interest at 8 per cent. per annum, the loan to be secured by first mortgage on real estate described in the following questions and answers and to which — hold the indefeasible fee simple title. Said real estate is described as follows: (give the record description here.)

1. Is the property you offer as security in —? —
2. If not, what town is it in? —
3. Said property is located on — street, between — street and — street, and is No. — on — street. Is there a continuous sidewalk to this property? —
4. The ground is — feet front — feet deep to an alley. What direction does the house front? —.
5. Ground above or below grade? — How much? — feet.
6. Do other dwellings or houses adjoin this? — How near? — Is the vicinity well built up? —
7. Improvements now on property —. Residence? — What value? \$—.
8. One or two story? — How long built? —
9. Foundation? — Solid or pillars? — Number of flues? — Kind of roof? — Number of rooms? — Pantry? — Closets? — Bathroom? — Veranda? — Condition of repairs? — Is house well painted? — How many coats? — Plaster and skim? — Piped for gas? — Stable? — Value? \$—. Outhouses? — Value? \$—. Well and cistern? — Fences, side and rear? — Walks about the house? — Cellar? — Size? — Heated by? — Electric light? — City water? — Sewer? — What other improvements? — Is the residence all finished at this time? — Are the other improvements all complete? — If not, what is yet incomplete? —
10. Improvements to be built and completed with this money? — I agree to build — story — rooms, frame, or — dwelling or — with — or brick foundations, brick flues, cellar — feet by — feet, well, cistern, veranda, outhouse, — walks about the house, barn — feet by — feet — story, fences, (front, sides and rear of premises). Size of house on ground will be — feet by — feet, shingle roof, grates, gas, electric lights, city water, bathroom and furnishings, sewer, painted — coats, plastered — coats and skim, to be finished in hard — wood. All improvements to be built of good material. — of above rooms will be upstairs, and — rooms

downstairs, all of which will be plastered and finished complete. I will also build —. The contract price for all the above improvements is \$—.

11. Do you wish this loan to be made in instalments as the building progresses, or to be granted on completion of the improvements? —

12. For what purpose are you borrowing this money? —

13. What is the actual cash value of this lot or ground without buildings? \$—.

14. Actual cash value of present improvements? \$—.

15. Actual cash value of proposed improvements? \$—.

16. Total cash market value of property and improvements when complete? \$—.

17. What is or will be the rental value? \$—.

18. What is your monthly income? \$—.

19. What is the amount of your total debts and liabilities at this time? \$—.

20. How many depend upon you for support? — A wife? — — children and —.

21. How long have you owned the property? —

22. What did you pay for it? — In cash or trade? —

23. If not all paid for, how much is unpaid? —

24. Do any other liens or encumbrances exist against the property and what are they and amounts? —

25. Have you ever before made application for a loan in any other association on this property? — What result? —

26. To what date are taxes paid? —

27. Does your wife (or husband) consent to join in the mortgage? —

28. Give full name of wife — of husband —.

29. Business occupation of the applicant for the past five years has been —. I hold — shares in your association. My age is — years. Wife's age — years.

If this application is accepted, I will furnish at my expense a complete abstract of title to the land proposed as security and have the same certified to be correct by the proper party, which abstract shall be brought down to a date subsequent to the approval of my application for the loan, and show a clear and perfect title in the applicant. I agree to pay the expenses of examination and appraisal of the property, and pay for recording the mortgage and making of the papers. I also further agree to furnish the mortgagees, each year during the continuance of said loan, with evidence that all taxes and assessments against said property have been paid. I also agree that this loan, if accepted, shall be governed in all things by the rules of the association in relation to loans, which rules are hereby receipted for and made a part hereof as fully as though copied at length herein. I do solemnly swear that the foregoing statements are true, and that there are no encumbrances of any kind on said property, except as herein stated.

The applicant herein warrants that the representations above made are true, and agrees that they shall form a part of the considerations of the mortgage, which may hereafter be executed by said applicant to said association to secure such loan as may be granted, and if there is any misrepresentation in said ap-

plication it shall operate as a default in the conditions of said mortgage and render the debt due and the mortgage may be foreclosed.

Dated at —, this — day of —, 19—.

\_\_\_\_\_. [Seal]

\_\_\_\_\_. [Seal]

STATE OF —, }  
COUNTY OF —, } ss.

On — day of —, 19—, personally appeared before me the above-named — and made oath that the answers by —h— made and subscribed are true and full.

\_\_\_\_\_, Notary Public. [Seal]

Commission expires —.

1. If property is in name of husband and wife jointly, both must sign this application. Applicants will please read application carefully.

### 5556. Appraiser's report.

We, the undersigned, state that we are well acquainted with the real estate values in — county, in the city of —, —, in which the within-described property is located, and have made a personal inspection and examination of said property. We further say that said lot or ground (aside from all improvements) is worth \$— and the buildings now erected (without the ground) are worth \$— and would bring at forced sale \$—. We believe that this property is adequate security, with improvements, present and proposed, for a loan of \$—. We are not interested directly or indirectly in the result of the within application for loan.

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

### 5557. Mortgage to building and loan association.

This indenture witnesseth, that — of — county, state of —, mortgage and warrant to — Saving and Loan Association of —, —, the following real estate situated in — county, state of —, and described as follows, to wit:

This mortgage is executed and intended as security for the performance of the stipulations and agreements of a certain bond of even date herewith, executed by said — as obligor, to said association in the sum of — hundred dollars, which is a just and full loan upon a written application therefor by said obligor: Conditioned, that the said obligor shall continue to pay weekly

dues upon — share of Class C of the capital stock of said association of one hundred dollars each at the rate of — cents per week on each share of stock, and interest on said loan at the rate of — per cent, per annum, all payable on or before Saturday of each week; also to pay all fines and assessments on said shares as provided in the by-laws of said association.

And said obligor agrees to continue all such payments until said stock is matured according to the by-laws of said association. All payments of money hereby secured shall be made at the office of said association in the city of —, —, without relief from valuation and appraisement laws, together with — per cent. attorney's fees, and if so required at any time by the board of directors of said association, in gold coin of the United States at present weight and fineness. The mortgagor further agrees to keep such mortgaged premises in good repair, to pay all taxes and assessments thereon as the same become due, and to keep the improvements on said real estate insured in some responsible insurance company, to the satisfaction of the board of directors of said association, in the sum of \$—— for the benefit of said association, and to transfer such insurance to said association, to be held as collateral security until said loan is fully paid; and upon failure to so pay said taxes and assessments, said association may pay the same, or upon failure to procure and pay for said insurance, then the said association may procure and pay for the same, and may, at its option, procure necessary repairs to be made upon said real estate, and pay for the same, and in the event of foreclosure of this mortgage, said association may procure an abstract of the title of said real estate and pay for the same; and further, said association may pay any and all sums necessary to protect this mortgage as a first lien on said real estate, and it is agreed that all sums paid by said association, as aforesaid, shall be, and are, deemed as secured by this mortgage upon like terms and conditions, bearing the same interest as the amount secured by the above mentioned bond.

It is further expressly understood and agreed that time is of the essence of this obligation, and that on the failure of the obligor or payor to make the weekly payments provided for in

said bond, at the times named, for a period of thirteen weeks, then all of the unpaid principal of said bond, or other sums hereby secured and the interest, assessment and fines by said bond and this mortgage secured shall thereby become due and payable and this mortgage may be foreclosed, and that then said mortgagee secured have the rents and profits of said real estate to apply on any taxes or municipal assessments against said real estate or on the indebtedness secured by this mortgage, and shall have the right to collect such rents and profits, and for the purpose of so collecting and applying such rents and profits, take possession of said real estate without notice to the owner thereof, and such possession shall continue for said purpose until said taxes, assessments and indebtedness are legally paid, and, in event of foreclosure of this mortgage and sale of said real estate, until the same shall have been redeemed according to law. This mortgagee may, in event of foreclosure of this mortgage, have a receiver of said real estate appointed for the purpose of collecting and applying rents to the payment of sums hereby secured. But any failure on the part of this mortgagee herein to assert the right herein declared to such rents and profits, shall not prevent such mortgagee from afterward asserting such right, nor shall it, in any way prejudice the right of said mortgagee under this mortgage.

This mortgage shall be binding upon the heirs, executors, administrators, grantees and assigns of said mortgagor and upon the successors of said association.

In witness whereof, said mortgagor— ha— hereunto set — hand— and seal— this — day of —, 19—.

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

STATE OF —, }  
COUNTY OF —, } ss.

Before the undersigned, a notary public, in and for said county and state, this — day of —, 19—, personally came —

and each acknowledged the execution of the annexed mortgage.

Witness my hand and notarial seal.

\_\_\_\_\_,  
Notary Public.

My commission expires \_\_\_\_.

1. See MORTGAGES, post, 5931-5967.

### 5558. Affidavit.

STATE OF \_\_\_\_\_, }  
COUNTY OF \_\_\_\_\_, } ss.

I, \_\_\_\_\_, of said county and state, having executed a mortgage contemporaneous herewith to the \_\_\_\_\_ savings and loan association dated on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, upon the property particularly described in said mortgage and abstract of title furnished said mortgagee, dated \_\_\_\_\_, do solemnly swear that said abstract contains a true statement of the source from which \_\_\_\_\_ have derived \_\_\_\_\_ title to said premises, that \_\_\_\_\_ have a perfect and indefeasible estate in fee simple to said real estate described in said mortgage; that the same is clear and free from every kind and description of liens or encumbrances except as named below; that no one has a better title either in law or equity to said premises, and that \_\_\_\_\_ have not executed \_\_\_\_\_, or suffered or permitted any one in \_\_\_\_\_ behalf to execute any other conveyance, mortgage, lien or encumbrances for or upon said real estate prior to the mortgage above referred to within the last \_\_\_\_\_ days; that \_\_\_\_\_ have had no litigation in any of the courts named below wherein judgment has been rendered against \_\_\_\_\_, and \_\_\_\_\_ not a party to any suit now pending in either one of the courts of record in said county, or in the United States District or Circuit Courts of \_\_\_\_\_; that all the statements, either written or oral, made by the affiant \_\_\_\_\_ in the application for said loan are true; that affiant \_\_\_\_\_ married and more than twenty-one years of age; and that \_\_\_\_\_ make the above statements and representations for the purpose of procuring from said

mortgagee a loan, for the security of which said mortgage is given, and for no other purpose whatever.

That the only encumbrance on said property is \_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_.

Subscribed and sworn to before me, this \_\_\_\_ day of \_\_\_\_,  
19\_\_.

\_\_\_\_\_,  
Notary Public.

### 5559. First mortgage bond.

Know all men by these presents, that \_\_\_\_ of \_\_\_\_ county, state of \_\_\_\_, ha— this day borrowed of the \_\_\_\_ savings and loan association, of \_\_\_\_, \_\_\_\_, the sum of \_\_\_\_ hundred dollars, in lawful money of the United States, and having subscribed for and become the owner— of \_\_\_\_ shares of Class C, of one hundred dollars each, of the capital stock of said association, hereby transfer— such share— to said association as collateral security for the repayment of said loan, and agree— to pay weekly dues on said share— of \_\_\_\_ cents per share, together with interest on said loan at the rate of eight per cent. per annum, with all fines, fees and assessments on such share— as are and may be hereafter provided for in the by-laws of said association, receipt of such by-laws being hereby acknowledged.

All such payments to continue until stock is matured according to the by-laws of said association, at its office in the city of \_\_\_\_, \_\_\_\_, on or before Saturday, of each week, between the hours of half past seven o'clock P. M. and nine o'clock P. M., and such payments to be made in gold coin of the United States, of the present standard of weight and fineness, whenever required by the board of directors of said association; all without relief from valuation and appraisal laws, and with ten per cent. for attorney's fees.

Executed this \_\_\_\_ day of \_\_\_\_, 19\_\_.

\_\_\_\_\_  
\_\_\_\_\_.



**CARRIER CONTRACTS.****5564. Charter party.**

This charter party, made the — day of —, in the year —, between — of —, of the first part, and — of —, of the second part, witnesseth:

1. That the first party lets to the second party the ship —, now lying at —, of which — is master, for a voyage to be made from — to — (or for the term of — from the date hereof).

2. That the first party warrants that the said ship shall be (kept) seaworthy, and in every respect fit for the voyage (and shall be provided with a sufficient crew and provisions) .

3. That the second party may put on board the said ship any goods whatever, except such as are contraband of war.

4. (If the vessel is chartered for a voyage only.) That the second party shall be allowed — days for loading at the port of —, and — days for discharging (and reloading) at the port of — (and — days for final discharge at the port of —), exclusive in each case of Sundays and legal holidays, and commencing in each case from the time that notice is given to the second party, or his proper agent, or the readiness of the vessel to receive or discharge cargo; and that for every day of additional detention of the vessel for these purposes, the second party shall pay to the first party — dollars.

5. That the second party shall pay to the first party at —, within — days after the arrival of the said ship at that port, — dollars in full for the hire of the same (and shall also pay, as they fall due, the expenses of victualing and manning the same, and all port charges and pilotage that may be due thereon). Witness the hands and seals of the parties.

1. Form proposed in the Civil Code, known as Field's Code, recently reported to the legislature of the state of New York.

**5565. Express company's receipt for money.**

—— Express Company, Express Forwarders.

No. ———. ———, 19——. \$——.

Received from the —— bank one package, sealed and said to contain —— dollars, addressed “—— bank, ——,” upon the special acceptance and agreement that this company is to forward the same to its agent nearest or most convenient to destination only, and there deliver the same to other parties to complete the transaction, such delivery to terminate all liability of this company for such damage; and also that this company is not to be held liable in any manner or to any extent for any loss or damage of such package or of its contents occasioned by fire or steam. The shipper and owner hereby severally agree that all the stipulations and conditions in this receipt contained shall extend to and inure to the benefit of each and every company or person to whom the —— express company may intrust or deliver the above-described property for transportation, and shall define and limit the liability therefor of such other company or person.

1. Bank of Kentucky v. Adams Exp. Co., 93 U. S. 174, 23 L. ed. 872.

**5566. Bill of lading of express company.**

——— Express Company.

Received from ——, at ——, the following articles, which we undertake to forward to the point nearest to destination reached by this company only, perils of navigation excepted. And it is hereby expressly agreed, that the said —— express company is not to be held liable for any loss or damage, except as forwarders only; nor for any loss or damage of any box, package or thing, for over —— dollars, unless the just and true value thereof is herein stated, nor for any loss or damage by fire, the acts of God or of the enemies of the government, the restraint of governments, mobs, riots, insurrections or pirates, or from any of the dangers incident to a time of war, nor upon any property or thing unless properly packed and secured for transportation; nor upon fragile fabrics, unless so marked upon the package containing the same; nor upon any fabrics consisting of or contained in glass. If any sum of money, besides the charges for transportation, is to be collected from the consignee on delivery of the property described

herein, and the same is not paid within thirty days from the date hereof, the shipper agrees that the company may return said property to him at the expiration of that time, subject to the conditions of this receipt, and that he will pay the charges for transportation both ways, and that the liability of this company for such property, while in its possession for the purpose of making such collection, shall be that of warehouseman only.

**5567. Straight bill of lading of railroad company—Original—Not negotiable.**

Shipper's No. —

Agent's No. —

Received, subject to the classifications and tariffs in effect on the date of issue of this original bill of lading, at —, —, 19—, from — the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned and destined as indicated below, which said company agrees to carry to its usual place of delivery at said destination, if on its road, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property, over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions, whether printed or written, herein contained (including conditions on back hereof) and which are agreed to by the shipper and accepted for himself and his assigns.

The rate of freight from — to — is in cents per 100 lbs.

If — Times 1st	If 1st Class	If 2d Class	If Rule 25	If 3d Class	If Rule 26	If Rule 28	If 4th Class	If 5th Class	If 6th Class	If Special per —	If Special per —

(Mail address—Not for purposes of delivery.)

Consigned to —

Destination, —, state of —, county of —. Route, —.

Car initial —. Car No. —.

Columns for: No. of packages; description of articles and

special marks; Weight (subject to correction); Class or rate; Check column.

If charges are to be prepaid, write or stamp here "To be prepaid." \_\_\_\_\_

Receiver \$—— to apply in prepayment of the charges on the property described hereon.

\_\_\_\_\_  
Agent or cashier.

Per \_\_\_\_\_

(The signature here acknowledged only the amount prepaid.)

Charges advanced: \$——.

\_\_\_\_\_, Shipper.

\_\_\_\_\_, Agent.

Per \_\_\_\_\_

Per \_\_\_\_\_

(This bill of lading is to be signed by the shipper and agent of the carrier issuing same.)

#### CONDITIONS.

Sec. 1. The carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto, except as hereinafter provided.

No carrier or party in possession of any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, quarantine, the authority of law, or the act or default of the shipper or owner, or for differences in the weights of grain, seed or other commodities caused by natural shrinkage or discrepancies in elevator weights. For loss, damages or delay caused by fire occurring after forty-eight hours (exclusive of legal holidays) after notice of the arrival of the property at destination or at port of export (if intended for export) has been duly sent or given, the carrier's liability shall be that of warehouseman only. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in possession), the carrier or party in possession shall not be liable for loss, damage or delay occurring while the property is stopped and held in transit upon request of the shipper, owner or party entitled to make such request; or resulting from a defect or vice in the property or from riots or strikes. When in accordance with general custom, on account of the nature of the property, or when at the request of the shipper the property is transported in open cars, the carrier or party in possession (except in case of loss or damage by fire, in which case the liability shall be the same as though the property had been carried in closed cars) shall be liable only for negligence, and the burden to prove freedom from such negligence shall be on the carrier or party in possession.

Sec. 2. In issuing this bill of lading this company agrees to transport only over its own line, and except as otherwise provided by law acts only as agent with respect to the portion of the route beyond its own line.

No carrier shall be liable for loss, damage or injury not occurring on its own road or its portion of the through route, nor after said property has been delivered to the next carrier, except as such liability is or may be imposed by law, but nothing contained in this bill of lading shall be deemed to exempt the initial carrier from any such liability so imposed.

Sec. 3. No carrier is bound to transport said property by any particular train or vessel or in time for any particular market or otherwise than with reasonable dispatch, unless by specific agreement indorsed hereon. Every carrier shall have the right in case of physical necessity to forward said property by any railroad or route between the point of shipment and the point of destination; but if such diversion shall be from a rail to a water route the liability of the carrier shall be the same as though the entire carriage were by rail.

The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property (being the bona fide invoice price, if any, to the consignee, including the freight charges, if prepaid) at the place and time of shipment under this bill of lading, unless a lower value has been represented in writing by the shipper or has been agreed upon or is determined by the classification or tariffs upon which the rate is based, in any of which events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence.

Claims for loss, damage or delay must be made in writing to the carrier at the point of delivery or at the point of origin within four months after delivery of the property, or in case of failure to make delivery, then within four months after a reasonable time for delivery has elapsed. Unless claims are so made the carrier shall not be liable.

Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance.

Sec. 4. All property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compressure. Grain in bulk consigned to a point where there is a railroad, public, or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership, and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

Sec. 5. Property not removed by the party entitled to receive it within forty-eight hours (exclusive of legal holidays) after notice of its arrival has been duly sent or given may be kept in car, depot or place of delivery of the carrier, or warehouse, subject to a reasonable charge for storage and to carrier's responsibility as warehouseman only, or may be, at the option of the carrier, removed to and stored in a public or licensed warehouse at the cost of the owner and there held at the owner's risk and without liability on the

part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

The carrier may make a reasonable charge for the detention of any vessel or car, or for the use of tracks after the car has been held forty-eight hours (exclusive of legal holidays), for loading or unloading, and may add such charge to all other charges hereunder and hold such property subject to a lien therefor. Nothing in this section shall be construed as lessening the time allowed by law or as setting aside any local rule affecting car service or storage.

Property destined to or taken from a station, wharf or landing at which there is no regularly appointed agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and when received from or delivered on private or other sidings, wharves or landings shall be at owner's risk until the cars are attached to and after they are detached from trains.

Sec. 6. No carrier will carry or be liable in any way for any documents, specie or for any articles of extraordinary value not specifically rated in the published classification or tariffs, unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 7. Every party, whether principal or agent, shipping explosive or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for all loss or damage caused thereby, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 8. The owner or consignee shall pay the freight, and all other lawful charges accruing on said property, and, if required, shall pay the same before delivery. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Sec. 9. Except in case of diversion from rail to water route, which is provided for in section 3 hereof, if all or any part of said property is carried by water over any part of said route, such water carriage shall be performed subject to the liabilities, limitations and exemptions provided by statute and to the conditions contained in this bill of lading not inconsistent with such statutes or this section, and subject also to the condition that no carrier or party in possession shall be liable for any loss or damage resulting from the perils of the lakes, sea or other waters; or from explosion, bursting of boilers, breakage of shafts or any latent defect in hull, machinery or appurtenances; or from collision, stranding or other accidents of navigation, or from prolongation of the voyage. And any vessel carrying any or all of the property herein described shall have the liberty to call at intermediate ports, to tow and be towed and assist vessels in distress, and to deviate for the purpose of saving life or property.

The term "water carriage" in this section shall not be construed as including lighterage across rivers or in lake or other harbors, and the liability for such lighterage shall be governed by the other sections of this instrument.

If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be

modified in accordance with the provisions of the tariff, which shall be treated as incorporated into the conditions of this bill of lading.

Sec. 10. Any alteration, addition or erasure in this bill of lading which shall be made without an indorsement thereof hereon, signed by the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading shall be enforceable according to its original tenor.

1. See ante, vol. 4, ch. 77.

### 5568. Contract for carriage of goods liable to extra hazard.

This agreement made this —— day of ——, 19——, between —— railroad company and ——, witnesseth:

That in consideration of said railroad company receiving for shipment and carrying at the tariff rates and without extra charge all freight consisting of —— which may be delivered by —— to said railroad company, between the —— day of ——, 19——, and the —— day of ——, 19——, which property, because of its weight, size or inherent qualities, or because of the manner in which it is packed or marketed, or other peculiarity of said property, is liable to extra hazard, it is hereby agreed between said carrier and shipper that the said carrier and all other carriers over whose lines said goods shall pass in course of shipment are hereby released from liability for loss occasioned by mob, riot, insurrection or rebellion and from all damages incident to war; also from liability for leakage of liquors, shrinkage or deficiency in measure of weight grains, or other property shipped in bulk; from breakage of glass, stoves, machinery, furniture, musical instruments and packages of eggs; and from loss or damages to any other articles, the bulk of which renders it necessary to be shipped in open cars; or for damages to perishable property of all kinds, occasioned from delay or change in the weather, and from damages for loss while said goods are in the carriers' depots.

The said —— agrees to save said carrier harmless from all claims made by any consignee of said property for loss occasioned from any of said causes while said property was in the control of said carrier or other carriers during the course of shipment to destination.

In testimony whereof, etc.

1. See ante, vol. 4, § 3174.

**5569. Contract to carry goods at reduced prices—Limitation of common-law liability.**

In consideration that ——— railroad company receives and hereby agrees to receive at the request of ———, the following goods: ———, the value not to exceed ——— dollars, for shipment from ——— to ———, and upon the further consideration that said railroad company shall charge for transportation of said goods the lowest tariff rates based upon the value of said property, namely: ———, the undersigned owner of said property above described hereby releases said railroad company and all other railroad companies over whose lines said goods may pass in course of shipment to destination, from all claims that may arise for damages to said goods, not resulting from the negligence of said railroad company, and said initial carrier and all other carriers over whose lines the said goods may pass in course of shipment are hereby released as insurers of said property; the carriers of said goods to be liable only for want of ordinary care and diligence in the handling and shipment of said goods.

It is hereby further agreed that ——— railroad company, the initial carrier, shall be liable only for damage done to said property while in its custody; and the consignor guarantees the said freight charges as above specified.

It is hereby further agreed that if any of the goods shipped consists of glass, crockery or other fragile articles, liable to be injured by the jolting or jarring of cars, or by coming in contact with other goods, such as would not inflict injury to ordinary freight, such injury shall be deemed one of the assumed risks of the shipment in consideration of the reduced rate or charges for said shipment.

In testimony whereof, etc.

1. See ante, vol. 4, ch. 79.

**5570. Provisions of carrier's live stock contract.**

That the said shipper is, at his own risk and expense, to load and take care of and to feed and water said stock whilst being transported, whether delayed in transit or otherwise, and to unload the same, and neither said carrier nor any connecting



carrier is to be under any liability or duty with reference thereto, except in the actual transportation of the same.

That said shipper shall see that all doors and openings in said car or cars are at all times so closed and fastened as to prevent the escape therefrom of any of said stock, and said carrier or any connecting carrier shall not be liable on account of the escape of any of said stock from said car or cars.

That no claims for damages which may accrue to the said shipper under this contract shall be allowed or paid by the said carrier, or sued for in any court by the said shipper, unless a claim for such loss or damage shall be made in writing, verified by the affidavit of the said shipper or his agent, etc.

And it is further agreed by said shipper that, in consideration of the premises and of the carriage of a person or persons in charge of said stock upon a freight train of said carrier or its connecting carriers without charge other than the sum paid or to be paid for the transportation of the live stock in charge of which he is, the said shipper shall and will indemnify and save harmless said carrier and every connecting carrier from all claims, liabilities and demands of every kind, nature and description, by reason of personal injury sustained by said person or persons so in charge of said stock, whether the same be caused by the negligence of said carrier or any connecting carrier, or any of its or their employés, or otherwise.

And ———— does hereby acknowledge that he had the option of shipping the above-described live stock at a higher rate of freight according to the official tariffs, classifications, and rules of the said carrier and connecting carrier, and thereby receiving the security of the liability of the said carrier and connecting railroad, and transportation companies as common carriers of the said live stock upon their respective roads and lines, but has voluntarily decided to ship same under this contract at the reduced rate of freight above first mentioned.

————— Company,  
By —————, Station Agent.

—————, Witness.

I hereby sign my name as a means of identifying myself as original signer of this contract. —————.

In consideration of the carriage of the undersigned upon a freight train of the carrier or carriers named in the within contract, without charge, other than the sum paid or to be paid for the carriage upon said freight train of the live stock mentioned in said contract, of which live stock I am in charge, the undersigned do hereby voluntarily assume all risk of accidents or damage to his person or property, and do hereby release and discharge the said carrier or carriers from every and all claims, liabilities and demands of every kind, nature and description, for or on account of any personal injury or damage of any kind sustained by the undersigned so in charge of said stock, whether the same be caused by the negligence of the said carrier or carriers, or any of its or their employés, or otherwise.

\_\_\_\_\_,  
Signature of man in charge.

\_\_\_\_\_, Witness.

1. Weaver v. Ann Arbor R. Co., 139 Mich. 590.

2. See also, ante, vol. 4, ch. 82.

### 5571. Maritime bill of lading.

Shipped in good order and condition, by — on board (here name and describe vessel), whereof — is master, now lying in port at —, and bound for the port of —, the following goods, wares and merchandise, to wit: (here designate merchandise, etc.), being marked and numbered as in the margin, and are to be delivered in the like order and condition at the port of —, the dangers of navigation only excepted, unto —, consignee, or to his (or their) assigns, he or they paying freight for the said —, with — primage and average accustomed.

In witness whereof, the master or purser of the said vessel hath affirmed to — bills of lading, all of this tenor and date; one of which being accomplished, the other to stand void.

Dated the — day of —, 19—.

\_\_\_\_\_.

**COMBINATION AGREEMENTS.****5572. Combination agreement between corporations.**

Memorandum of agreement made this — day of —, by and between — of city of —, state of —, party of first part, and — of city of —, state of —, party of second part, witnesseth:

Whereas, it is deemed expedient to wind up the business of the — company, and to unite its interests with the other — manufacturing interests in the United States in one corporation, to be known as the — company, organized under the laws of —; and,

Whereas, said — desires to furnish — dollars toward the necessary working capital of said — company, and also to sell his factory, and the machinery connected with same, to said — company.

Now, therefore, for the purpose of making such consolidation the parties hereto consent that the lands, buildings, machinery, tools and fixtures of the — company be sold and conveyed to the — company for the sum of — dollars, to be paid for in the common stock of said — company at its par value. And as it will be necessary for said — to borrow the principal part of said — dollars, for which he is to receive — dollars of the preferred stock of said — company at its par value, the said second parties agree to indorse the said — notes for such sum as is required to make up said — dollars, after deducting the amount of the net earnings due said — from the proceeds of the — company since —, —, and to raise the money on said notes.

An inventory of all the — materials of the said — company on hand — shall be made, and such property sold. The inventory and valuation of said personal property, upon which the same is sold, shall be the basis of settlement between the parties in the division of the profits of the — company. The first party is to assume the payment of the principal and interest

of a mortgage on the property of the — company for \$—, held by the — insurance company, and is to deposit with said — company, \$— of said common stock at its par value, as security for such payment. All the remaining stock, both preferred and common, is to be taken in the name of the first party, and with the exception of — shares of said common stock, is to be immediately transferred by him to said — to be held by said — as security for the indorsements as above stated, and any and all other indebtedness of said first party or said — company to said parties or either of them, and also as security to said second parties for their interest in the profits upon the said stock of the — company.

The debts due to the said — company are to be collected, and its indebtedness paid. A settlement is to be made between the parties hereto, and the profits divided, as provided in the agreement of —, —, except that the share of the profits belonging to said first party shall be applied to the payment of his debt to the — company, and in payment of any moneys due from him to either of said second parties; and what remains shall be contributed by him as a part of said \$—, and on the sum contributed he shall receive interest from the dividends paid on said stock.

The dividends on the stock of the — company, both common and preferred, including the \$— pledged as aforesaid, and the — shares retained by said —, —, for — year and — months from —, —, shall be applied, first, to the payment of interest on said mortgage to the — insurance company; second, to the payment of interest on the notes so indorsed by said second parties; and third, to the payment of interest to each of the parties hereto on the money advanced by them respectively in making up said sum of —. Of what there remains — shall be paid to each of the said second parties, and the other half applied to the payment of the principal of the notes so indorsed by said second parties, and of any advances that may be made by them.

The said second parties agree that they will advance to said first party the dividends belonging to them as aforesaid, to be

used in taking up said notes indorsed by them, and take therefor the notes of said first party, payable on or before —, —, with interest at the rate of — per cent. per annum, and hold said stock as security for the payment thereof. If all said notes indorsed by said second parties as aforesaid are not paid by —, —, then said second parties shall be entitled each to — of the dividends on all said stock for the whole of the year —. The notes to be given by said first party to said second parties for any cash that they may advance to make up said \$— shall bear interest at — per cent. per annum, and be payable on or before —, —. If all of the notes indorsed by said second parties as aforesaid, and any notes given by said first party to said second parties, are not paid by —, —, the said second parties are hereby authorized to sell said stock at public auction after — days' published notice, and apply the proceeds, or so much thereof as may be required, to the payment of said notes, interest, and expenses; the above provisions to apply to all original notes and renewals thereof.

It is expressly understood that said second parties, are to receive — (—), after deducting the payments for interest as above stated, of the net earnings of said stock, and merely — the dividends; and in settlement with said first party, he is to pay them, in addition to — the dividends declared, the — of any surplus or reserved fund which, if divided, would pertain to said stock; and on such settlement no loss that may be charged on account of the purchase and sale by said — company of other — factories shall be taken into account; and, if such settlement is made at the end of a —, the earnings of the whole year shall be averaged so that the said second parties shall receive the full half of the earnings of said stock for the whole year: provided, that on such settlement the second parties shall estimate such earnings from the trial balance of books of said — company, and shall make such allowances as to them shall seem just and equitable for loss and shrinkage in value of said — and shall take into consideration improvements that have been made out of the earnings thereof.

It is also agreed that the earnings of the stock of the — company, both common and preferred, including the \$— pledged to the — company, and the — shares held by said —, for — years after the — day of —, —, shall be applied as stated in said agreement of —, —; it being the intention hereof to provide that said second parties shall each receive — of the earnings of said stock for — years from —, —, that is, — of the full earnings of the stock for — and —, instead of for — year and — months, as stated in said agreement. In all other respects, except providing security for additional loans, as hereinbefore stated, said agreement is to remain in force and unchanged.

In witness whereof, etc.

1. Richardson v. Buhl, 77 Mich. 632.

### 5573. Pooling agreement.

Whereas — of —, — of —, and — of — are each the possessor of — shares of the capital stock of the — company; and whereas said parties are desirous of forming a pool of said stock for their mutual advantage and benefit, and whereas said — agrees to divert to said pool, the royalties and proceeds now received or which may be received by him, from the — (second company) of —, until such time as the first aforesaid — company shall begin paying regular dividends; now therefore, be it known that we the undersigned do hereby form a pool consisting of — shares of said capital stock of said — company (first named) of which we each shall stand possessed of an equal portion, viz.: — shares, the understanding being that all benefits accruing under said pool shall be shared equally, including any sales of said stock, and that said royalties and proceeds also shall be equally shared, until such time as the said — company (first named) shall pay dividends as aforesaid, when the said royalties shall revert to the sole use and benefit of said —.

Witness our hands and seals this — day of —, 19—.

1. See Green v. Higham, 161 Mo. 336. For an invalid pooling agreement, see Leonard v. Poole, 114 N. Y. 372.

**COMPOSITION WITH CREDITORS.****5575. Short form.**

We, the undersigned, creditors of — of —, hereby on behalf of ourselves and our respective firms severally agree with —, our debtor, that on payment to us respectively of a composition of — per cent. on the amount of our respective claims against him as stated below within — days from this date, we will respectively accept the same in full satisfaction of our several claims, and give him, at his expense, a release or other discharge from our several claims accordingly. And said — hereby agrees to pay said per cent. within said time. Dated this — day of —, 19—.

1. See ante, vol. 1, § 229.

2. See also, ASSIGNMENTS FOR BENEFIT OF CREDITORS, ante, 5325-5344.

**5576. Another short form.**

We, the undersigned, being respectively creditors of — of —, in the county of —, to the amounts set opposite our respective names at the foot hereof, do hereby severally agree to accept in full discharge of our respective debts against him a composition of — per cent., payable in instalments as follows: the first of — per cent. in — calendar months; the second of — per cent. in — calendar months; and the third and final of — per cent. in — calendar months, all from the date hereof; the said several instalments to be secured by the joint and several promissory notes of said debtor, and of — of — (or of said debtor indorsed by — of —), for the respective amounts of the said instalments. On full payment as aforesaid, we severally agree to execute to the said debtor, at his request and expense, a complete release and discharge from our said debts respectively, and from all claims, demands, and remedies in respect thereof. In case the said composition shall be paid before the execution by us respectively of such release, then from and immediately after full payment as aforesaid, and until such release shall be executed, this agreement

shall operate and be a discharge to the said debtor from our said debts respectively, and from all claims and demands in respect thereof, and from all our rights and remedies respectively for recovering the same in full, and may be pleaded and used as such in bar of any action hereafter to be instituted by any of us against the said debtor, in respect of our said several debts. Dated this —— day of ——, 19—.

**5577. Another form.**

Whereas —— of ——, state of ——, is indebted to —— of ——, state of ——, in divers sums of money, which said debtor is unable to pay in full, we, the undersigned creditors of said ——, have and do hereby agree among ourselves and with said ——, to undergo certain loss and to accept from said debtor —— per cent. on the dollar of his said indebtedness to us, in full discharge and satisfaction of said indebtedness.

In witness whereof, etc.

**5578. Composition upon cash payment within limited time.**

Indenture made this —— day of ——, 19—, between the several persons whose names and descriptions are contained in the schedule hereto, hereinafter called the creditors, of the one part, and —— of ——, the debtor, of the other part. Whereas the said debtor is indebted to each of the creditors in the sum written opposite to his or her name in the schedule hereto; and whereas the creditors have agreed to accept a composition of —— cents on the dollar in full discharge of their said debts:

Now this indenture witnesseth, and it is hereby mutually agreed and decided as follows: The said debtor shall, on or before the —— day of —— next, pay to each of the creditors who shall execute these presents before that day a composition of —— cents on the dollar on his or her said debt, which said creditors hereby agree to accept in full satisfaction and discharge of their said respective debts. In case such composition shall be duly paid each of them, the creditors do hereby release the said debtor, his heirs, executors, administrators, estate and effects from his or her debt, and do agree that such release shall be binding and effectual, although some of the creditors of the said debtor may



not execute these presents. Provided always that in case the said debtor shall commit an act of bankruptcy before the said — day of —, in respect of which he shall be adjudicated a bankrupt, or in case he shall not on or before the said — day of — pay to each of the creditors who shall execute these presents before such day the said composition of — cents on the dollar on his or her debt as hereinbefore is provided, then these presents shall be void.

In witness, etc.

**5579. Composition deed allowing debtor to carry on his business under the direction of committee of creditors.**

Indenture made the — day of —, 19—, between — (debtor) of —, of the first part; —, —, and — of — (committee of creditors), of the second part; and the several persons whose names and seals are hereunto subscribed and affixed, being also creditors of the said debtor, of the third part.

Whereas the said debtor is indebted to the several second and third parties hereto, in the several sums of money placed opposite to their respective names at the foot hereof;

And whereas at a meeting of the creditors of the said debtor, held this — day of —, it appears that the said debtor is at present unable to pay the several demands of all his creditors, but, having ample stock in trade and effects for that purpose, it has been agreed that the said debtor shall be allowed to carry on his said business for the term of — years, to be computed from the day of the date hereof, under the inspection of the said committee, who have been unanimously chosen by the said creditors and approved of by the said debtor for that purpose, under the conditions and stipulations hereinafter mentioned:

Now therefore, in pursuance thereof, and in consideration of the debtor's covenants and agreements herein contained, said committee, second party, and said several creditors, third parties, do, and each and every of them doth (so far as they lawfully may) give and grant unto the said debtor full, free and absolute liberty and license to carry on, manage, collect and dispose of his

stock in trade, credits and effects, under the inspection and control of the said committee, or any two of them, from the day of the date hereof until the — day of —, 19—, if he the said debtor shall so long live.

The said second and third parties, but not any one for the other or others of them, covenant with and to the said debtor, his executors, administrators and assigns that if they, the said second and third parties, or either of them, or their respective executors, administrators or partners, shall, contrary to the true intent and meaning hereof attach, arrest or otherwise molest the said debtor, then and in such case the claim of such person shall be forfeited and void.

And the said debtor, in further pursuance hereof, and in consideration of the license hereby granted to him as aforesaid, doth hereby for himself, his heirs, executors and administrators, covenant, promise and agree with and to the said committee and each and all other creditors of said debtor, in the manner following:

That he, the said debtor, his heirs, executors or administrators will well and truly pay unto all and every of said creditors, third parties, their respective executors, administrators or assigns, or other persons respectively authorized by them to receive the same, the full amount of the several debts or sums of money set opposite to their respective names at the foot hereof on or before the expiration of the said term of — years, or such prolonged period as hereinafter is mentioned (if the same shall be so granted), without deduction, according to the true intent and meaning hereof.

That he shall and will, as soon as conveniently may be after the execution hereof, make out a full and exact account in writing of all his estate and effects, both real and personal, and of the several outgoing, charges and encumbrances now affecting the same respectively, and deliver such account, or a true copy thereof, unto each of said committee, on or before the — day of — next.

That he, from time to time, as often as any moneys, bonds, bills, notes or securities shall be received by him, will deposit the same

with such bank or banker as the said committee shall appoint for that purpose, or otherwise dispose thereof as the said committee shall direct.

That he shall not and will not at any time during the said term, unless he shall previously have paid the whole of his debts now due to the said creditors, alienate, release, charge or encumber his said estate, stock in trade, credits and effects.

That he shall not and will not, until he shall have paid the whole of his debts now due to his said creditors, be concerned either on his own account or in connection with any other person or persons, in any business, trade or commercial transaction whatsoever, without the written consent of the said committee or the major part of them.

That he shall not and will not do or permit any act or thing whatsoever whereby or by means whereof any of his creditors may obtain a security or securities for his, her or their debt or debts, or any preference or priority of payment, contrary to the true intent and meaning of these presents.

That he shall not and will not release any debt or debts, or bring any action or suit for recovering the same, except with the consent, and under the direction and advice, of the said committee.

That he will keep proper books of account, wherein a true, plain and perfect entry shall be daily made of all receipts and payments, and of all other matters and transactions relating to the said trade as may be necessary to show the true state of affairs of the said debtor; and shall also preserve and take copies of all letters written, sent or received to or from any person or persons whomsoever concerning the said trade; and each of said committee shall at all times have free access to all such books, letters, papers and writings, with full liberty to make extracts or copies thereof.

That he will, at the end of every month, or oftener if required by the said committee, or any or either of them, make and deliver unto them a general written account of all receipts and payments, and of all other matters and transactions relating to the said trade, up to the end of the month thence next preceding.

That no moneys, bonds, bills, notes and securities arising from or belonging to the said estate, credits and effects of the said debtor, and so paid in or deposited with such bank or banker as aforesaid, shall be drawn out, except for the purposes hereinafter mentioned, and by draft to be signed by the said debtor and one, at least, of the said committee, or other, the inspector or inspectors for the time being.

That it shall be lawful for the said committee, out of the moneys arising from the said estate, credits and effects of the said debtor, first, to pay the costs incurred in preparing and executing these presents, and to satisfy the wages and salaries of clerks, servants and other persons employed in carrying on the said trade, and all other incidental expenses incurred in the conduct and management of the same; and after such payments as aforesaid, said committee shall discharge all the debts owing from the said debtor unto any person or persons whose debts shall not exceed the sum of — dollars, or such of them as shall agree to accept that sum in full of their respective demands; and in the next place, shall pay or allow unto the said debtor, during the said term of — years, or such extended period, if granted, as hereinafter mentioned, the yearly sum of — dollars, for his subsistence; and, subject to such payments as aforesaid, shall and may from time to time, as often as sufficient moneys shall be in hand to pay a dividend of — per cent. upon the several debts now due from the said debtor to the several second and third parties hereto, pay and distribute all such moneys unto and amongst the several creditors, ratably and in proportion to the amount of their respective debts; and after payment and satisfaction of all such debts, costs, charges and expenses as aforesaid, shall pay over the surplus moneys, if any, unto the said debtor, his executors or administrators, for his and their own absolute use and benefit.

The several creditors of said debtor, parties hereto, shall and will accept and receive their said debts now respectively owing to them by the said debtor as aforesaid, in the manner hereinbefore arranged and directed for the payment thereof, according to the true intent and meaning of these presents.

In case the said creditors shall not have received the whole of their said debts on or before the said — day of —, or such extended period if granted as hereinbefore mentioned, and the said debtor shall on such — day of —, or other day or time last aforesaid, well and effectually convey, assign and assure unto such person as the major part of said creditors, at a meeting to be holden for that purpose pursuant to fourteen days' previous notice in the — newspaper, shall direct, all such parts of his estate and effects as shall then remain unapplied to the purposes aforesaid, for the benefit of the said creditors, in such manner as the major part of them shall require, then and in such case the said creditors, parties hereto, will, at the debtor's request and costs, execute and deliver unto him and them an effectual release and discharge of all debts and demands whatsoever owing from said debtor to said creditors respectively, and from all actions and suits for the recovery thereof; and also shall and will deliver up all bonds, bills, notes and other securities relating thereto.

**5580. Composition between partners and their joint creditors with covenant not to sue.**

Indenture made the — day of —, between —, — and —, all of —, trading in partnership under the style or firm of — & Co., and hereinafter called the debtors, of the one part; and the several persons, companies and partnership firms, being creditors of the debtors in respect of their said partnership, whose names and seals are set and affixed in the schedule hereto, and who are hereinafter called the said creditors, of the other part.

Whereas, at a meeting of the said creditors held on the — day of — last, a resolution was passed to the effect that they should accept a composition of — cents on the dollar upon the amount and in full discharge of their said debts, such composition to be payable in three equal instalments at the respective periods of —, — and — calendar months from the — day of —; and whereas, in part pursuance of the said resolution, the debtors have delivered to the said creditors respectively,

upon their respective execution hereof, the joint promissory notes of the debtors for the payment of the said composition to the said creditors respectively, as aforesaid. Now this indenture witnesseth, that further pursuant to said resolution, and in consideration of the premises the said creditors hereby respectively covenant with the debtors that said creditors, respectively, will not, unless default shall be made in meeting any of the said notes at maturity, sue, arrest, attach or molest any of said debtors, or any of their estate, for or on account of the said respective debts, and that these presents may be pleaded as a defense to any action or other proceeding which may be brought, instituted or taken by or on behalf of any of the said creditors in breach of this covenant; and further, that if the said notes shall be paid at maturity, the said debtors shall be absolutely released and discharged from the said debts due from them to the said creditors respectively, and these presents may accordingly thereafter be pleaded as a defense to any action or other proceeding which said creditors respectively shall have theretofore brought, or otherwise might thereafter bring, institute or take in breach of this covenant. Provided always, that in case default shall be made in meeting any of the said notes at maturity, or in case, before the said notes shall be fully paid to the said creditors respectively as aforesaid, they shall present a bankruptcy petition, or make an assignment of their estate for the benefit of their creditors, or any arrangement with their creditors different from this present arrangement, then and in any of such cases the covenants on the part of the said creditors herein contained shall be thenceforth at an end and void, and the said creditors shall respectively thenceforth be at liberty to sue for or prove for the full amount of their respective debts less the amount which may have been received by them on account thereof under these presents or otherwise. Provided further, that these presents shall not in any wise prejudice or affect the rights or remedies of any of the said creditors against any surety or sureties, or any person or persons, other than the said debtors or their respective heirs, executors or administrators, and that for the sake of conformity alone the said debtors or any of them,

their or any of their heirs, executors or administrators may be joined in any actions or other proceedings to be brought, instituted or taken by any of the said creditors against such surety or sureties, or other person or persons, and that these presents shall not prejudice or affect any security which any of the said creditors may have or claim for his debt; but nevertheless, if such security be of such a nature that the creditor holding or claiming the same would, by the law of bankruptcy or insolvency in force at the time and place of the execution of these presents, be bound to realize the same, or deduct the value thereof before proving his debt in bankruptcy against the joint estate of the debtors, then and in that case such creditor, unless he shall give up his said security, shall be entitled to receive the said composition upon so much only of his said secured debt as may remain after such security shall have been realized, or after credit shall have been given for the full value thereof.

In witness, etc.

**5581. Composition with assignment by debtor to trustees to secure same and release of debts by creditors.**

Indenture made the —— day of —— between —— of ——, hereinafter called the debtor, of the first part; —— of —— and —— of ——, hereinafter called the trustees, of the second part; and the several persons, companies and firms, being creditors of the debtor, whose names are affixed to the schedule hereto, hereinafter called the said creditors, of the third part. Whereas at a meeting of the said creditors held on the —— day of ——, it was resolved to accept an offer made by or on behalf of the debtor for payment to the said creditors respectively of a composition of —— cents on the dollar upon the amount and in full discharge of their respective debts due from the debtor, and set out in the said schedule, such composition to be paid in two equal instalments at —— and —— calendar months from the date of the said meeting, and to be secured by the assignment of the estate of the debtor to the trustees in the manner hereinafter appearing: Now this indenture witnesseth that, pursuant to said resolution, and in consideration of the release on the part of the said creditors hereinafter contained, the debtor

hereby covenants with the trustees, and also (as separate covenants) with the said creditors respectively, that he, the debtor, will on or before the expiration of the said periods of — and — calendar months pay or cause to be paid to the trustees sufficient money to meet the respective instalments of composition payable to the said creditors respectively as aforesaid, and will on demand by the trustees at any time after the date hereof pay to them, or as they shall direct, all costs and expenses of and incidental to the investigation of the debtor's affairs, with a view to this arrangement, and of and incidental to the preparation hereof, and obtaining the signatures of the said creditors thereto, and the receipt and distribution of the said composition. And it is hereby agreed and declared that the trustees shall immediately, upon receipt of the said instalments of composition, pay the same to the said creditors respectively entitled thereto. The debtor as beneficial owner hereby assigns to the trustee all the personal estate of or belonging or due and owing to him, except household furniture, wearing apparel and bedding: To have and to hold the said estate unto the trustees upon trust in the meantime, and until default shall be made by the debtor in payment to the said trustees of any of the said instalments of composition according hereto, to allow the debtor to use, employ, deal with and dispose of the same estate for the purposes of his business, or for such other purposes as the trustees shall think proper, but subject to the control and supervision of the trustees; and from and after such default upon trust to take possession of, collect, sell and realize the said estate or any part thereof, and to apply the net proceeds thereof (after payment of all costs and expenses payable under these presents which may be then unpaid) in or toward the immediate payment to the said creditors respectively of so much of the said composition as shall be then unpaid, and to pay the surplus (if any) thereof, and assign or deliver the remainder of the trust estate to the debtor, his executors, administrators or assigns. If, during the currency of either of the said periods of — months and — months, the trustees shall be of opinion that, regarding the condition and prospects of the debtor's business, it would be ex-



pedient forthwith to wind up the same and realize and divide the estate, they shall call a meeting of the said creditors by circular letter stating the time, place and object of the meeting, and sent by post or otherwise to the last-known place of abode or business of such creditors respectively, or their respective agents, in time to give to such creditors or agents — clear days' notice thereof; and if at such meeting a majority in number representing three-fourths in value of the creditors present or represented at the meeting shall resolve that the said business and estate be wound up and realized, then the trustees shall with all convenient speed proceed to wind up the said business, and to sell, collect and realize the said estate, and shall apply the net proceeds thereof in like manner as if the same had been moneys arising from the exercise of the trust for sale hereinbefore contained. In consideration whereof, said creditors hereby respectively release the debtor, his heirs, executors and administrators from the said debts due to them respectively, and from all actions, proceedings, claims and demands in respect thereof. Provided always, that these presents and said release shall in no wise prejudice or affect the rights or remedies of any of the said creditors against any surety or sureties; but nevertheless if such security be of such a nature that the creditor holding or claiming the same would by the law of bankruptcy or insolvency be bound to realize the same or deduct the value thereof before proving his debt in bankruptcy, then and in that case such creditor (unless he shall give up his said security) shall be entitled to receive dividends under these presents upon so much only of his said secured debt as may remain after such security shall have been realized, or after credit shall have been given to the full value thereof, such value to be agreed upon between such secured creditor and the said trustee, or in case of dispute to be ascertained by two impartial valuers (one to be chosen by such secured creditor, and the other by the said trustee), or by an umpire to be named by such valuers before proceeding to the valuation.

In witness, etc.

**5582. Composition with indorsers.**

We, the undersigned creditors of — of —, state of —, hereby agree to accept in full satisfaction of the indebtedness of said — to us, — cents on each dollar of said indebtedness, said settlement to be evidenced by two promissory notes of — dollars each, and each of said notes to be signed by said debtor and indorsed by —, and payable in — days after date, with interest at the rate of — per cent. per annum until paid, and said debtor hereby accepts the foregoing offer of composition by said creditors.

Witness our hands and seals, this the — day of —, 19—.

\_\_\_\_\_,

\_\_\_\_\_,

\_\_\_\_\_,

Creditors.

\_\_\_\_\_,

Debtor.

**ADDITIONAL CLAUSES IN CASE SURETY JOINS.****5583. Joint and several covenant by debtor and surety with trustee.**

Now this indenture witnesseth that pursuant to said agreements, and in consideration of the premises and of the release hereinafter contained, the said debtor and surety jointly and severally covenant with the said —, or other, the trustee for the time being hereof, that they or one of them will pay to the said trustee in trust for the said creditors such a sum as shall be equal to — cents in the dollar on the total amount of the debts specified in the schedule hereto annexed, by two equal instalments, the first of such instalments to be paid on the — day of — next, and the second instalment on the — day of — next.

**5584. Assignment of book debts to indemnify surety.**

In consideration of the said surety entering into the covenants hereinbefore contained, the said debtor hereby assigns unto the said surety all the books and other debts now due and owing to him in his trade or business of —, carried on by him at

—, and all securities for the same, to hold the same to the said surety upon trust; to receive the amount of the said debts, and out of the same to pay in the first place the expenses attending the obtaining payment thereof, and to apply the residue thereof to the end and intent that the said surety shall and may at all times hereafter be indemnified against the sums hereinbefore covenanted by him to be paid and every part thereof, and against all claims and demands for and in respect of the same, with and by means of the said premises hereby conveyed and the proceeds thereof, and subject to the trusts and purposes aforesaid upon trust for the said debtor absolutely.

**5585. Surety to stand in position of principal toward creditors.**

Provided always, that although as between the said debtor and the said — the latter is surety only for the payment of the said composition, nevertheless, as between the said surety and the said trustee and the said creditors, the said surety shall be deemed and taken to be a principal debtor, so that he shall not be discharged from his liability by reason of time being given to, or any arrangement made with, the said debtor without his consent, or by reason of any other circumstance which would or might have the effect of discharging him if he were surety only.

**5586. Creditors electing to avoid deed to discharge surety.**

Provided, nevertheless, that in case any creditor shall elect to avoid these presents under the proviso lastly hereinbefore contained, then the said surety shall henceforth stand released from all further liability under the covenants hereinbefore contained, or upon any promissory note, not then already due, made pursuant to said covenants in favor of such creditor as aforesaid; and such creditors shall erase, or cause to be erased, from any such promissory note not already due, the name of the said surety, without prejudice, nevertheless, to the rights of such creditor against the said debtor, and shall indemnify the said surety against all liability on such note.

**5587. Release by creditors to debtor on payment of composition previously agreed upon in satisfaction of their debts.**

This indenture, made the — day of —, 19—, between

the several persons who have by themselves or their respective partners, agents or attorneys hereunto subscribed and affixed their names and seals respectively, being respectively the creditors of — of —, of the one part, and the said — of — (the debtor), of the other part: Whereas the debtor has for many years past carried on the trade or business of a — at — aforesaid, and in the course of his trade or business has become indebted to the creditors in the several sums of money which are set opposite to their respective names in the schedule hereunder written; and whereas the debtor, being unable to meet his engagements in full, recently proposed to the creditors to pay to them a composition of — per cent. upon the amount of their respective debts in full discharge thereof, which they agreed to accept, and they also agreed, upon payment of the said composition, to execute to the debtor such release as is hereinafter contained; and whereas the debtor has, pursuant to said agreement, this day paid to the creditors respectively the said composition of — per cent. upon the amount of their respective debts, as the creditors hereby respectively acknowledge: Now this indenture witnesseth, that further pursuant to said agreement, and in consideration of the premises, each of the creditors, so far as relates to the debt or sum set opposite to his name in the said schedule, hereby acquits, releases and discharges the debtor, his heirs, executors and administrators, and his estate and effects from such debt or sum and from all actions, claims and demands whatsoever in respect of the same, which such creditor, his partners, executors, administrators or assigns now has or have, or at any time hereafter shall or may or but for these presents might have against the debtor, his estate or effects, for or by reason of the said debt.

In witness, this — day of —, 19—.

(Signatures and seals of creditors.)

#### 5588. Receipt for composition on debt.

Received this — day of —, 19—, of —, the sum of — dollars, being a composition of — per cent. upon a debt of — dollars owing by the said — to me, and which composition I accept in full satisfaction and discharge of my said

debt, and I undertake to execute a formal release to him of the said debt whenever required.

Witness my hand and seal.

#### 5589. Contribution.

This agreement, made and entered into this — day of —, 19—, by and between the undersigned, witnesseth, that the undersigned are jointly liable to one — in the principal sum of \$— growing out of — (here state nature of debt, such as note, account, judgment, partnership, liability, etc.), and that the undersigned — has paid (or is about to or has consented to pay) said debt individually on behalf of all the undersigned jointly liable as aforesaid, and that therefore the undersigned —, —, —, and —, jointly and severally agree to repay to the said — (the one paying such debt), such sum as will equalize the amount thus paid by said —, and we further agree that the undersigned will each pay to the other such amount as will equalize each such one paying an excess of the proportionate amount for which each of the undersigned is liable to the said — (creditor), as aforesaid, and that in such equalization any and all excess payments made in the premises shall bear interest at the rate of — per cent. per annum from date of payment until repaid.

In witness whereof, etc.

1. See ante, vol. 2, §§ 1490, 1491.

#### 5590. Composition with sureties.

—, party of the first part, hereby agrees with — and —, parties of the second part, to pay to said parties of the second part, within — months from the date hereof, — per cent. of each dollar of indebtedness of — to said second parties, such payment to operate in full discharge of the indebtedness of said — to said second parties, and the said second parties hereby agree to accept said payment in full discharge of such indebtedness of said — to them, and to cancel said indebtedness.

In testimony whereof, we do hereunto set our hands and seals  
this the —— day of ——, 19—.

\_\_\_\_\_,  
First Party.

\_\_\_\_\_,  
\_\_\_\_\_,  
Second Parties.

### CONDITIONAL SALES.

See BILLS OF SALE, AGREEMENTS TO SELL AND CONDITIONAL SALES.

**CORPORATIONS.**

See, also, ACKNOWLEDGMENTS; ASSIGNMENTS; DEEDS; INDEMNITY; POWER OF ATTORNEY, ETC.

**5595. Promoter's agreement.**

This agreement by and between —, —; —, —, and —, parties of the first part, and —, party of the second part, witnesseth that, whereas the said parties of the first part have arranged and agreed among themselves to organize a corporation to be known as the — company, with a capital stock of — dollars, divided into — shares of the par value of — dollars each, the same to be located at the city of —, for the purpose of engaging in the manufacture and sale of automobiles and automobile sundries and supplies; and,

Whereas the said parties of the first part have agreed among themselves to take and pay for — shares of the said capital stock on the complete organization of said company; and

Whereas the said party of the second part having had experience as a promoter has signified a willingness to secure subscriptions for — additional shares of the capital stock of said company:

Now, therefore, it is hereby agreed that the said party of the second part shall within — days from the date hereof secure bona fide solvent subscriptions to the capital stock of said proposed corporation, the same to be paid on such terms as the board of directors of said corporation after its incorporation may determine, consistent with the governing statute of the state.

In consideration of the services so to be rendered by the said party of the second part, the said parties of the first part hereby undertake that the said company on complete organization by its proper officers shall issue to said party of the second part, — shares of the capital stock of said corporation as full paid; and for which the said party of the second part shall pay no other consideration whatever. On failure or refusal of the said corporation to so issue said shares of stock to said second party,

the said parties of the first part hereby agree and bind themselves to pay to said second party the sum of — dollars in cash.

On failure of said second party to secure said solvent and bona fide subscriptions within said time this agreement shall be of no force and effect. In case said second party shall procure said subscription in said time then the said parties of the first part agree to sign any proper papers, instruments, articles or certificates necessary to complete the incorporation of said proposed company, and to pay the necessary fees, expenses and charges for the incorporation thereof.

In witness whereof, the parties have hereunto set their hands this — day of —, 19—.

(Signed.)

#### 5596. Subscription agreement.

The undersigned, in consideration of the mutual promises of the subscribers hereto, as hereinafter set forth, do severally agree to take the number of share of the capital stock of the — company, set opposite our respective names, as soon as said company shall be incorporated, and to pay for said shares at their par value upon demand of the treasurer of said company after its incorporation.

Name.	Residence.	Number of Shares.	Amount.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

#### 5597. Subscription agreement—Another form.

We, the undersigned, hereby subscribe for and agree to take and pay for the number of shares of the capital stock of the — corporation set opposite our respective names and post-office addresses, and we hereby promise and agree to pay for said stock at such times and in such instalments as the board of directors of such corporation may require. (Payments to be made without relief from valuation or appraisal laws.)



Name.	Post-office Address. City, County, State.	Number of Shares.	Amount.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**5598. Articles of association—General form.**

We, the undersigned, hereby mutually agree to unite and associate ourselves as a corporation, and for such purpose we hereby make, execute and adopt the following articles of incorporation:

Art. 1. The name of this corporation shall be —.

Art. 2. The period of the existence and the duration of the life of this corporation shall be — years (or perpetual).

Art. 3. The principal office and place of business of this corporation shall be at the city of —, in the county of —, state of —. (It may establish an office or place of business in another state.)

Art. 4. The seal of this corporation shall be (here fully describe the seal as agreed upon).

Art. 5. The objects and purposes of this corporation shall be — (here insert fully and in detail the purposes for which the corporation is organized as named in the statute; but inconsistent and separate statutory purposes should not be stated. Generally only one statutory purpose should be stated in detail.)

Art. 6. The business and prudential affairs of this corporation shall be managed and controlled by a board of — directors, to be elected annually at the annual meeting of the stockholders.

Art. 7. The names and residences of the persons who have been selected as the board of directors to manage the business and prudential affairs of this corporation for the first year are as follows:

Names.	Residences.
_____	_____
_____	_____
_____	_____

Art. 8. The annual meeting of the stockholders for the election of directors and for the transaction of other business shall

be held at the office of the corporation on the first Saturday in January, 19—, and on the first Saturday of January in each year thereafter. The vote in the election for directors shall be by ballot, and the election may be conducted in such manner and form as may be provided by the by-laws. The three directors receiving the highest number of votes shall hold their office for three years and until their successors are elected; the next three directors receiving the next highest number of votes shall hold their office for two years and until their successors are elected; the three directors receiving the lowest number of votes shall hold their office for one year and until their successors are elected. At the first annual meeting thereafter, three directors shall be elected for the terms of three years and at each annual election thereafter, three directors shall be elected for the term of three years, the intention being that one-third of such board of directors shall be elected annually.

Art. 9. In all elections for directors each stockholder shall be entitled to one vote for each share of stock owned by him for each director.

(Where the statute permits, the following may be added: In all elections for directors each stockholder shall have the right to vote the number of shares of stock held by him for as many persons as there are directors to be elected; and in casting such vote, he may cumulate his votes and give one candidate as many votes as the number of directors multiplied by the whole number of his share of stock shall equal; or he may distribute his votes on the same principle among two or more of the candidates for directors. On all matters involving corporate acts transacted in stockholders' meeting, any stockholder may demand a vote according to the ownership of stock.)

Art. 10. The capital stock of this corporation shall be — dollars, which shall be divided into common and preferred stock. Of the common stock there shall be — shares, of the par value of — dollars each; and of the preferred stock there shall be — shares, of the par value of — dollars each. The said — dollars of preferred stock shall be entitled to receive dividends at the rate of — per cent. per annum, payable semi-

annually on the first Monday of January and the first Monday of July in each year, out of the earnings of said corporation before any dividends shall be paid upon the said common stock, and such dividends shall be cumulative so that any deficiency in the dividends to be paid on said preferred stock in any year shall be made good out of the earnings of subsequent years before any dividend shall be paid upon the said common stock. And in case the earnings of the corporation shall permit a dividend in excess of said — per cent. so to be paid semiannually, then and in any such event the preferred stockholders, after receiving such preference dividend, shall be entitled to share equally with the holders of the common stock as to any dividend over and above the said preference dividend. And on the final liquidation of this corporation and the distribution of its assets all arrears of dividends shall be paid to the holders of such preferred stock and the shares of preferred stock shall be paid in full before any payment shall be made to the holders of the common stock; but when such arrears of dividends and the face value of such preferred shall have been paid, the holders thereof shall receive no other or additional payments whatever. The amount of such preferred stock shall not be changed or altered by any increase or reduction in the capital stock of said corporation without the consent in writing of the holders of a majority thereof. The holders of the common stock shall have the management and control of this corporation so long as the business of said corporation is able to pay from its earnings the said preference dividends on such preferred stock, and during such time the holders of such preferred stock shall have no voting power. But in case said dividends on said preferred stock shall not be earned and paid for a period of — years, then and in that event the holders of preferred stock shall have the same voting power in the elections and in the management and control of said corporation as the common stockholders. (In case there are two or more classes of preferred stock, the following may be used): The first class of preferred stock shall be entitled to noncumulative dividends at the rate of not exceeding — per cent. per annum, which shall be payable semiannually on the first

Monday of January and the first Monday of July of each year before any payments of any dividend on other stock for such year; but such dividends shall be payable from the undivided net profits of the corporation when and as determined by the board of directors and only when such board shall declare dividends therefrom. After the payment of such dividends and after the payment of dividends upon the second preferred stock as hereinafter stated, the said first preferred stockholders shall be entitled to share equally with the holders of common stock in any further dividends so declared and paid. The second preferred stock shall be entitled to noncumulative dividends at the rate of — per cent. per annum, which shall be payable annually on the first Monday of January and the first Monday of July of each year before any payment of any dividends on other stock for such year, in preference and priority to any payment of any dividend on the common stock for such year; but such dividend shall be paid only from undivided net profits of the corporation remaining after providing for and the payment of the full dividends for such year on the said first preferred stock, when and as such undivided net profits shall have been determined by the said board of directors, and only if and when the board shall declare dividends therefrom. The common stock shall be subject to the prior rights of the holders of all classes of preferred stock at any time outstanding, according to the preferences thereof. (Provision for the management of the corporation and the voting of the preferred stock may here be made.) The corporation reserves the right to redeem and retire at any time either or both classes of its said preferred stock at par in cash, upon the payment of all dividends to which such stock shall be entitled, if such redemption shall be authorized by law.

Art. 11. Immediately upon the election of directors and the adjournment of the stockholders' meetings, or as soon thereafter as convenient, the directors so elected shall meet and organize by electing one of their number president, and one of their number vice-president, and by electing from their number or from the stockholders (or same persons if desired) a secretary and treasurer, each of whom shall perform such duties and powers

as generally appertain to such offices and as may be stated or required of them by the by-laws or by the board of directors.

Art. 12. All stockholders must vote in person and cannot vote by proxy. And all persons holding stock in a fiduciary capacity shall be entitled to vote the shares so held by them; and all persons whose stock has been pledged shall be entitled to vote the same, unless the transfer of the stock on the books of the corporation shall show that the pledgee is entitled to vote the same, and in all such cases, the pledgee only shall have the right to vote such stock. And the holders of any bond or debenture issued or to be issued by this corporation, whether secured by mortgage or otherwise, shall have the same power to vote in respect to the corporate affairs and management to the same extent and in the same manner as stockholders; that is, in determining the number of votes to be cast by each bond or debenture holder, the amount of his bond or bonds shall be divided by the par value of a share of the capital stock and the result will be the number of votes to which he is entitled. In case of default in the payment of either principal or interest of any bond or debenture, any such bond or debenture holder may have the same right of inspection of the corporate books, accounts and records as any stockholder.

Art. 13. This corporation shall have and hold a lien on all stock subscribed to secure the payment of such subscriptions, and no sale or transfer of stock or shares shall avoid such lien; and as against this corporation, no sale or transfer of stock shall be valid and convey title to the shares unless entered upon the books of the corporation as required by the by-laws.

Art. 14. No single person or corporation shall subscribe for, own or hold at any one time more than — shares of the capital stock of this corporation.

Art. 15. The subscriptions for and the ownership of all stock in this corporation are made and taken upon the condition that any holder of stock desiring to sell the same shall first offer his stock to the corporation at his lowest price and the corporation shall have — days in which to exercise its option to purchase the same. On its refusal to purchase, the stockholders

shall have — days to exercise their option to purchase such stock at said price. After the expiration of such time, the stockholder shall be free to make any other sale of his stock.

Art. 16. The greatest amount of indebtedness to which this corporation may at any time subject itself shall not exceed — dollars; or shall not exceed two-thirds of the capital stock actually subscribed.

Art. 17. The private property of the stockholders of this corporation shall not be subject to the payment of the corporate debts in any amount or to any extent whatever.

Art. 18. The stock of this corporation shall be nonassessable (or shall be assessable as follows:).

Art. 19. (When authorized by law, any of the following provisions as to payment of stock may be inserted.)

The entire amount of the capital stock herein named has been fully paid by the transfer to —, in trust for this corporation when organized, of certain real estate and a certain manufacturing plant, located at —, consisting of real estate, buildings, machinery, manufactured and raw material, and the good will of the — company, a corporation, all of which has been valued by these incorporators at the sum of — dollars, and which value has been agreed upon as the fair market value of all of said property, or,

Whereas, the subscribers and incorporators have contributed certain property and have done certain work in preparing a plant and factory in which to carry on the business of this corporation, and whereas, each has paid the sum of — dollars on each share of stock subscribed by him, and which sums together with the property and services contributed are considered by the incorporators as sufficient to carry on the corporate business, it is therefore agreed and understood that no further payments are to be made on said subscriptions or to said capital stock and that the said capital stock is to be taken and considered as paid in full, or,

The amount of common stock actually paid in is the sum of — dollars, and the amount of preferred stock actually paid in is the sum of — dollars, or,

The amount of the capital stock actually paid in at the date hereof is the sum of fifty thousand dollars, of which amount ten thousand dollars has been paid in cash, and forty thousand has been paid in property, an itemized description of which at the valuation at which each item is taken is as follows, to wit:

- Item 1. Real estate consisting of the following:  
 Lots Nos. 2, 3, and 4, in ——'s addition to the city of ——, together with the buildings thereon, including factory, power house, storage buildings, engine and boiler-rooms, water tanks, etc., which item is taken at a valuation of.....\$20,000.00
- Item 2. Machinery and tools of every kind and description situate in the buildings on said lots described in Item 1, consisting principally of a —— engine, motor, boilers, fans, line shaftings, pulleys, belt, lathes, crane, saw, which item is taken at a valuation of ..... 10,000.00
- Item 3. Shop furniture and fixtures of every kind and description in the buildings upon said premises described in Item 1, consisting principally of work benches, —— kits of workman's tools, steel racks and elevators, which item is taken at a valuation of..... 1,000.00
- Item 4. Merchandise, including all manufactured goods, goods in process of manufacture and raw material, now in the buildings on the said real estate described in Item 1, and consisting principally of the following items: (insert), which item is taken at a valuation of..... 5,000.00
- Item 5. All office furniture, fixtures and office supplies in the buildings on said real estate described in Item 1, and consisting principally of desks, safes, filing cabinets, typewriters, printing press, type ——, blank stationery, catalogues and circulars, which item is taken at a valuation of..... 1,000.00

Item 6. The entire interest in and the title to a certain patent-right and letters patent No. —, issued on the — day of —, 19—, to —, the patentee, the same being an invention relating to new and useful improvements in (here state) which invention and letters patent have been duly assigned to the said corporation, and which item is taken at a valuation of..... 3,000.00

Total value of property taken at a valuation of \$40,000.00

Cash paid in ..... 10,000.00

Total capital paid in.....\$50,000.00

Art. 20. This corporation may maintain an office outside of the state of —, and may keep and maintain an office for the transaction of business in the city of —, state of —, where meetings of the directors may be held and business transacted by the directors and officers and agents of the corporation.

Art. 21. These articles may be changed, altered or amended at any authorized meeting of the stockholders by a vote of the stockholders representing a majority of the stock.

Art. 22. The names and places of residence of the incorporating members, the subscribers hereto, and the number of shares subscribed by each of them and which each agrees to take and pay for are as follows:

Names.	Places of Residence. (City, County, State)	No. of Shares.
_____	_____	_____
_____	_____	_____
_____	_____	_____

In witness whereof, etc.

(Signed and acknowledged.)

1. Some statutes require the above valuation to be sworn to.

### 5600. Proxy.

I hereby appoint — my proxy with full authority to vote



for me and in my place at any and all stockholders' meetings of the ——— corporation.

Witness my hand and seal this ——— day of ———, 19—. (Signed.)

In the presence of ———.

### 5601. By-laws.

#### ARTICLE I.

1. The principal office of the company shall be in the city of ———, but meetings of the board of directors for the transaction of business, except such as is required by law to be transacted at the principal office, may be held in the city of ———, and the books of the company, excepting the stock and transfer books, shall be kept either at its office in ——— or at the principal office in ———, as either the president or the directors may from time to time determine.

2. The board of directors shall consist of not less than ——— nor more than ——— members, one of whom shall be chosen by said board as its president, one as secretary and one as treasurer, which board shall have full power and authority to manage and control the affairs and business of the company, and at any meeting of the board of directors a majority of the whole number of directors shall constitute a quorum for the transaction of business, and a majority of the votes of such quorum shall be sufficient to pass any measure before such meeting.

3. The board of directors shall be chosen from among the stockholders at the annual meeting of said company to be held at their principal office the first Tuesday of ——— in each year, and it shall be the duty of the secretary to give ——— days' notice in person or by mail to the stockholders of such annual meeting.

4. In case of a vacancy in the board of directors, a majority of the remainder of the members thereof shall fill such vacancy, and a majority of the board may also increase the number of directors to ——— and elect additional members when they may deem it advisable, and thereafter the number of directors shall be ———, and such election shall be good until the next annual meeting of the stockholders.

## ARTICLE II.

1. The duties of the president, secretary and treasurer shall be such as are usually imposed upon such officials of corporations and as are required by law, and such as may be assigned to them respectively by the board of directors, from time to time, and the treasurer shall give bond in the sum of —— dollars, approved by ——.

2. Other officers, agents and employés may be appointed, and their duties assigned and compensation fixed by the board of directors.

## ARTICLE III.

The corporate seal of the company shall be a circular seal with the name of the company around the border and the date of the organization in the center.

## ARTICLE IV.

1. Certificates of stock signed by the president and treasurer, and sealed with the seal of the corporation, and in form approved by the board of directors and in accordance with the law, shall be issued by the company to the holders of the stock of the company.

2. Transfer of the stock shall be made either in person or by attorney only on the books of the company in a transfer book kept for that purpose, and upon the surrender of the old certificate.

3. Each stockholder shall be entitled to cast one vote for every share of stock held by him at any election, or on any subject before any annual or special meeting of the stockholders, and such votes may be cast whether in person or by written proxy, but not without the presentation of the certificates representing the stock on account of which such stockholder claims the right to vote.

## ARTICLE V.

1. These by-laws may be altered or amended at any time by the entire board of directors or by a vote of the majority of the board at a meeting held for that purpose, five days' notice of such meeting having been given in writing either by mail or

personal service to each member of the board by the president or secretary.

**5602. Directors' resolution—To borrow money.**

Resolved, That the president and secretary of this company be and they are hereby authorized to borrow money for or on behalf of this company not exceeding — dollars; and they are hereby authorized on behalf of this company to secure the repayment of such loans by mortgaging (or pledging) the property of the company as they may deem expedient or as may be required.

**5603. Directors' resolution—Making calls.**

Resolved, That a call be and is hereby made of — dollars per share on the unpaid capital stock of this company, and that the same be payable to the treasurer of this company at the office of the company on or before the — day of —, 19—.

**5604. Directors' resolution—Declaring dividend.**

Resolved, That a dividend of 5 per cent. on the capital stock of this company be and the same is hereby declared payable out of the surplus earnings of the company to the stockholders according to their respective holdings, the same to be paid on the — day of —, 19—.

**5605. Notice of call.**

To —:

You are hereby notified that the board of directors of the — company, to the capital stock of which you subscribed — dollars, has made the following calls and assessments with the time of payments as follows:

Twenty-five per cent. thereof due and payable on or before the — day of —, 19—;

Twenty-five per cent. thereof due and payable on or before the — day of —, 19—;

Twenty-five per cent. thereof due and payable on or before the — day of —, 19—;

Twenty-five per cent. thereof due and payable on or before the  
 — day of —, 19—;

Said sums to be paid to the undersigned treasurer of said corporation at its principal office at — street, city of — (or the same to be paid at — bank in the city of —).

(Signed) —, Treasurer.

#### 5606. Common-stock certificate.

No. — Shares  
 Incorporated Under the Laws of —.  
 The — Company.

Capital Stock — dollars. Shares — each.  
 Full paid and nonassessable.

This is to certify that — is the owner of — shares of the capital stock of the — company, transferable only on the books of the company by the holder thereof in person, or by duly authorized attorney, upon surrender of this certificate.

In witness whereof, said corporation has hereunto set its name by its president and treasurer (or secretary) with the corporate seal affixed hereto.

(Corporate Seal.) —, President.

—, Treasurer (Secretary).

#### 5607. Preferred-stock certificate.

No. — Shares.  
 Incorporated under the Laws of the State of —.  
 The — Company.  
 Capital Stock \$—

Common Stock \$— Preferred Stock —  
 Full paid and nonassessable.

This is to certify that — is the owner of — shares of the preferred capital stock of the — company, transferable only on the books of the company by the said owner, in person or by duly authorized attorney, upon surrender of this certificate properly indorsed.

The preferred stock represented by this certificate is entitled to an annual cumulative dividend of —— per cent., payable out of net profits before any dividend is paid upon the common stock of the company. Should the net profits in any year be insufficient to pay said preferred dividend, either in whole or in part, any unpaid portion thereof shall become a charge against the net profits of the company and shall be paid in full out of said net profits before any dividends are paid upon the common stock. After the common stock in any year shall have also received a dividend of —— per cent., both the preferred and common stock shall participate equally in any further dividends that may be declared in that year.

On liquidation of the company said preferred stock shall receive any unpaid dividends accrued thereon and shall receive payment of its full par value of one hundred dollars (\$100) per share from the assets of the company before anything is paid therefrom to the common stock, but shall not participate further in the distribution of said assets.

Witness the seal of the company and the signatures of its duly authorized officers this —— day of ——, 19——.

(Corporate Seal.)

\_\_\_\_\_, President.

\_\_\_\_\_, Secretary.

#### 5608. Preferred stock.

The amount of capital stock is to be —— dollars, of which —— dollars is to be preferred stock, and —— dollars common stock. The said —— dollars of preferred stock shall be entitled to receive dividends at the rate of —— per cent. per annum, payable semiannually on the first days of —— and ——, in each year, out of the earnings of said company in preference to any dividends upon the common stock, and said dividends shall be cumulative so that any deficiency in the dividends to be paid on said preferred stock in any years shall be made good out of the earnings of subsequent years before any dividends shall be paid upon the common stock. Such preferred stock shall not, however, be entitled to participate in any other or additional earnings or profits, but shall be entitled to be repaid in full upon any dis-

tribution of the assets of said corporation in the event of insolvency or dissolution, before any distribution of capital shall be made to the holders of the common stock; and the amount of said preferred stock shall not be changed or altered by any reduction in capital of said corporation without the consent in writing of the holders of a majority thereof. The control and management of the said corporation is to be in the hands of the holders of the common stock so long as the business of the company is able to pay from its earnings, or reserve, dividends of — per cent. per annum on all the preferred stock, the holders of such preferred shares to have no voting power so long as said dividends on said preferred shares shall not be earned and paid for a period of — years, then and in such case the preferred stock of said corporation shall, upon the expiration of said — years, but in no event earlier than — years, have the same voting power as the common shares, to wit, one vote for each share of stock.

#### 5609. Underwriting contract.

Whereas, — of —, hereinafter called the promoter, proposes to organize a corporation under the laws of the state of —, to be known as the — company, hereinafter called the corporation, for the purpose of acquiring the stock, property and plants and taking over and consolidating the business of companies engaged in —, named and located as follows: (here insert names of the companies), said corporation to have a capital stock of — dollars, consisting of — shares of — per cent. preferred, and — shares of common stock.

And whereas said promoter has obtained options for the purchase of all of said property of said companies at certain prices to be paid for partly in cash and partly in preferred and common stock of said corporation.

And whereas it will be necessary to provide at least — dollars in cash in order to complete said purchase and provide the necessary working capital for said corporation.

And whereas it is deemed desirable to form a syndicate for the purpose of furnishing the cash required by underwriting and

guaranteeing a subscription to the preferred stock of such corporation at its par value, which syndicate shall be composed of those who subscribe hereto and which shall be represented by the — bank of —, as managers.

And whereas such syndicate for so underwriting, guaranteeing and furnishing the amount of cash above mentioned is to receive as a commission therefor from said promoter — dollars of preferred and — dollars of common stock, both fully paid up and nonassessable, which commission, after paying the fees of the — bank above named, is to be divided among the undersigning subscribers in proportion to their subscriptions.

Now, therefore, in consideration of the premises, the undersigned subscribers each desiring to become a member of such syndicate, and for himself severally and not jointly, to underwrite and guarantee the purchase and payment of such stock to the extent of his subscription hereto, it is hereby agreed that the undersigned subscribers, each for himself, and not jointly, does hereby subscribe for so much of the preferred stock of the corporation as is set opposite our respective names upon the terms herein stated, and does hereby agree to pay to said bank in cash the full face value thereof upon — days' notice. When payment is to be made, said bank shall issue negotiable receipts therefor, when ready to receive the same in exchange for certificates of stock in said corporation.

With each share of preferred stock subscribed and paid for each subscriber shall receive one full paid share of common stock of said corporation.

This agreement shall not become obligatory upon any of the parties hereto unless and until preferred stock to the amount of — dollars is underwritten according to the terms hereof, but shall immediately become obligatory when such amount is so subscribed. Said bank shall mail notice of this fact to said subscribers.

Said bank shall also have power to enforce this agreement either by suit upon subscriptions or by forfeiture of all payments made by parties in default, and may deprive the same of any right to participate in the benefit of this agreement.

It is further agreed that upon delivery by said promoter, or any one for him, of the certificates of stock in said corporation to said bank, the latter is hereby authorized to immediately pay over to such said promoter, or as he shall direct, the cash paid in by the subscribers hereto, and said promoter of said corporation shall in no way become responsible for the proper distribution of such shares to the subscriber hereto by the said bank.

If, for any reason, said promoter shall abandon the project of organizing said corporation, and shall so notify the said bank, then this agreement in all its parts shall become inoperative, and all sums paid by said subscribers shall be returned to them.

In witness, etc.

#### SUBSCRIBERS.

Names.	Addresses.	Number of Shares of Preferred Stock.
_____	_____	_____
_____	_____	_____
_____	_____	_____

#### 5610. Articles of incorporation for agricultural association.

We, the undersigned, with our respective residences set opposite our names, hereby voluntarily associate ourselves under the acts of the general assembly of the state of —, approved — day of —, 19—, as a voluntary association, to be known and designated as "The — county agricultural association," by articles of association as follows, to wit:

##### Article I.

The name of this association shall be the — county agricultural association.

##### Article II.

The principal or home office of this association shall be at — in — county, state of —, at which place its business shall be transacted.

##### Article III.

The objects and purposes of this association are, and shall be, to promote and encourage agriculture; to encourage and promote



the breeding and improvement of live stock; to promote and encourage all matters relating to agriculture and horticulture; the cultivating and developing of speed in horses; and the encouragement and advancement of all mechanical arts.

#### Article IV.

The existence of said association shall continue for a period of — years from the completion of its organization, unless sooner dissolved by a majority vote of all its stockholders.

#### Article V.

The capital stock of this association shall be — dollars, which shall be divided into — shares of — dollars each.

#### Article VI.

The capital stock of this association shall be subscribed for by the subscribers signing these articles of association, and shall be paid for in cash on the completion of this organization.

#### Article VII.

The officers of this association shall consist of president, vice-president, secretary, treasurer and six directors, and each of such officers shall be elected annually on the — day of — of each year hereafter.

#### Article VIII.

All moneys arising from the sale of the capital stock of this association, or which may accrue from any and all sources shall be paid directly to the secretary who shall give his receipt therefor, and all moneys received by him shall be by him paid over to the treasurer who shall receipt such secretary for the same.

#### Article IX.

The secretary and treasurer shall each execute a bond to be approved by the board of directors, conditioned on the faithful performance of their respective duties as such officers and for an accounting of all money which shall come into their hands as such officers, which bonds shall each be in the sum of — dollars.

## Article X.

Each stockholder, in all elections, and in all matters to be determined by vote or ballot, shall be entitled to one vote for each share of stock he may hold, which vote or votes may be cast in person or by some person duly authorized by such stockholder by written or printed proxy.

## Article XI.

The duties and salaries of all the officers of this association shall be prescribed and fixed by the by-laws, rules and regulations, which by-laws the board of directors are hereby authorized to make and prescribe.

## Article XII.

The corporate seal of this association shall be a circle upon which shall be engraved a —, and the words —, and in the center of which shall be the word —.

## Article XIII.

These articles of association shall be in full force and binding as soon as all said stock is subscribed for.

## Article XIV.

The regular meetings of the stockholders of this association shall be held each year on the — day of —, and until said first annual election, the following subscribers hereto shall act as the officers thereof: —, president, — vice president, — secretary, — treasurer, and each of the subscribers hereto shall act as a director, and such directors shall manage the business and prudential concerns of such association until the first annual election.

Now, therefore, for the purpose of carrying into effect and force all of the provisions, conditions and stipulations of the above and foregoing articles of association, we do now agree and consent to and with each other to the organization of said association as therein specifically set forth and stated, binding ourselves jointly and severally to abide by and be governed by said articles of association and by such by-laws, rules and regulations as may be made from time to time by the board of directors,

and also to subscribe, take and pay for the number of shares of said stock as set opposite our respective names, and agree to pay for the same in cash on the completion of said organization, and on the issuance of a certificate of authority, for said association to transact business as such, by the secretary of state of the state of —, which payment we agree to make without relief from valuation and appraisal laws of the state of —.

NAME.	NUMBER OF SHARES.	AMOUNT.	RESIDENCE.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

#### 5611. Acknowledgment.

STATE OF —,        }  
COUNTY OF —,    } ss.

Before me, notary public in and for said county and state, on this — day of —, 19—, personally appeared —, and acknowledged the execution of the foregoing articles of association.

Witness my hand and notarial seal this the — day of —, 19—.

\_\_\_\_\_,  
Notary Public.

My commission expires —.

#### 5612. Articles of association for drug company.

We, the undersigned, hereby associate ourselves into a corporation under and by virtue of the laws of the state of —, and more particularly under an act entitled —, and the acts amendatory thereof and supplementary thereto, and for that purpose we do hereby make this certificate of the following articles of association of incorporation:

##### Article I. Name.

Said corporation shall be known by the name of —.

##### Article II. Object.

The object and purpose of this corporation shall be and is to manufacture, compound, buy, sell and deal in all kinds of drugs,

chemicals, minerals, plants and other compounds, medicines, toilet preparations, articles and devices of every description, cigars and tobacco, books, stationery and printed matter of every description, species, and all kinds of food, and all other such articles and things that are usually dealt in or manufactured and prepared by and are incidental to the wholesale and retail drug business, or the wholesale and retail general merchandise or general store business; and to buy, own or lease any or all personal property incidental to the proper carrying out of said purposes.

### Article III. Capital Stock.

The capital stock of this corporation shall be the sum of — dollars of which — dollars shall be common stock, divided into — shares of — dollars each, of the par value of — dollars; and — dollars of preferred stock divided into shares of the par value of — dollars each. This preferred stock shall be issued upon such terms and conditions as the board of directors may by resolution determine, such terms to be expressed in the certificate evidencing such preferred stock. The board of directors shall furthermore have power, and they are hereby authorized, to sell the stock of said corporation at not less than — cents on the dollar, or — below par, and to issue therefor certificates fully paid and nonassessable. Preferred stock has the right to vote.

### Article IV. Term.

The term of the existence of this corporation shall be — years from the date of organization of this company.

### Article V. Place of business.

The place of doing the business of this corporation, and its principal office, shall be located at — of —, state of —.

### Article VI. Directors.

The directors who shall manage the prudential affairs of this corporation shall be three in number, and those who shall manage its affairs for the first year and until their successors are

elected and qualified are —, — and — of city of —, state of —.

### Article VII. Powers of Directors.

The board of directors are hereby further authorized, empowered and directed to receive and take over from — all of the stock, furniture and fixtures of every nature and description at one time owned and used by —, druggist, in connection with his drug business and now situated and located in the storeroom and basement at — in the city of —, state of —, at their fair cash value, to be determined by said board of directors, and to issue therefor the stock of this company in payment therefor upon such terms as the board of directors may determine, not inconsistent with these articles; and the board of directors are hereby further authorized, empowered to buy and take over any other property or stock including the fixtures, and authorize stock to be issued therefor upon such terms as the board of directors may determine not inconsistent herewith.

In witness whereof, we do hereto set our hands and seals this the — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Here follows certificate of acknowledgment.)

### 5613. Articles of incorporation of church.

The undersigned of the city of —, county of —, state of —, do hereby associate ourselves as a body corporate under an act providing for the organization of voluntary associations in force the — day of —, 19—, and adopt the following general articles of association:

Article 1. The corporate name of said association shall be —, city of —, state of —.

Article 2. The object of this association shall be the promotion of the interests of religion in our midst, and to teach and support in every manner possible the faith of the — confession in America.

Article 3. The officers of this association shall consist of a board of trustees of three or more persons chosen from its members in such manner, time and place as shall be specified in its by-laws. The said trustees shall have the sole management and control of all the property of the association.

Article 4. The officers of said board shall consist of a president, secretary and treasurer, to be annually chosen from among the members of the board, who shall perform the duties usually assigned to such officers.

Article 5. The following persons shall constitute the board of trustees of the association for the first year of its existence and until their successors are elected, —, president, —, secretary, —, treasurer.

Article 6. The principal place of business of said association shall be in the city of —, state of —.

Article 7. The seal of this association is, a round seal with a chalice in the center surrounded with the following inscription: —.

Article 8. The trustees of this association shall be elected annually from its members on the — day of —.

Article 9. In witness whereof, we have hereunto set our hands and seals this — day of —, 19—, state of —, city of —.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

STATE OF —,        }  
COUNTY OF —.    } ss.

(Here follows certificate of acknowledgment.)

#### 5614. Articles of incorporation for cemetery association.

Know all men by these presents that the undersigned have associated themselves together for the purpose of forming a corporation under the following written articles of association:

##### Article I.

The corporate name of said association shall be the — cemetery association.

## Article II.

The said corporation is not organized for pecuniary profit, and shall have no capital stock.

## Article III.

The object of the corporation is to hold title to suitable real estate for the burial of the dead, and to control, improve, ornament, beautify, care for, manage, regulate and maintain the said real estate as a cemetery, and to raise funds for such purposes; and it shall have power to sell lots in such cemetery, and to assess lots therein and to receive and hold in trust gifts, donations and legacies, to be devoted to such purposes. The business affairs of the corporation shall be managed by three directors, elected as hereinafter provided, who shall have the power to elect such other officers as they deem necessary under the by-laws of the corporation, such officers to serve without pay, and the directors to keep accurate accounts of all costs and expenditures.

## Article IV.

The names and places of residence of each incorporating member are as follows:

NAME.	CITY.	STATE.
_____	_____	_____
_____	_____	_____
_____	_____	_____

## Article V.

The principal place of business of said corporation shall be the — church situated near said cemetery which is located in —, county of —, state of —.

## Article VI.

The term of existence of said corporation shall be — years.

## Article VII.

The corporate seal shall be a round disk with the words — embossed around the outer edge thereof.

## Article VIII.

The three directors of the corporation who shall manage its business and prudential affairs shall be elected by ballot at the annual meeting of the incorporators which shall be held on the — day of — of each year, unless said day falls on Sunday, in which event the said annual meeting shall be held on the following day.

At the first annual meeting three directors shall be elected; one to serve one year, one for two years, and one for three years. And at each annual meeting thereafter one director shall be elected and serve three years.

## Article IX.

The affairs of the corporation shall be managed by three directors and the names of the directors who shall manage such affairs for the first year are —, —, —.

In witness whereof, we have hereunto set our hands and seals this — day of —, 19—.

(Here follow the signatures of incorporators and certificate of acknowledgment.)

**5615. Articles of association for investment company.**

We, the undersigned, voluntarily associate ourselves as a corporation under an act of the general assembly of the state of —, entitled "An Act concerning," etc., approved — day of —, 19—, and all supplementary and amendatory laws thereto.

## Article I.

The corporate name of this association shall be — investment company.

## Article II.

The amount of the capital stock of this association shall be — dollars divided into — shares of — dollars each, the said stock to be paid in full by the transfer to this association of the good will of the business lately conducted and owned by —, now deceased, and such other good will as has been added thereto since his death by — and — under the name of —.



The said good will is valued by the incorporating members in the sum of — dollars; that with said good will shall also be transferred to this association, all moneys, notes, bonds, mortgages and property of every description held in trust by —, deceased, or by the said — for others, which transfer shall be in trust for the real owners thereof, but such transfer shall not include any property owned by the — estate, or by — person.

It is agreed among the incorporators that the one-third of said capital stock shall be issued and given to said —, one of the incorporators herein, fully paid and nonassessable, and the one-third of said capital stock shall be issued and given to —, one of the incorporators herein, fully paid and nonassessable, and that the remaining one-third shall be given to —, one of the incorporators herein, fully paid and nonassessable.

It is agreed among the incorporators herein that no stockholder in this corporation can mortgage or transfer his or her stock without first submitting it to each and every other stockholder of this corporation and giving each and every other stockholder of this corporation an opportunity to buy said stock, and if said parties cannot agree on its value, the value is to be fixed by two appraisers, one to be selected by the proposed stockholder, and one by the other stockholders of this association, and in the event of a disagreement among the said two appraisers they shall select a third appraiser for the purpose of fixing a value and selling-price of said stock, which shall be the price at which said stock shall be sold to any other stockholder wishing to buy at the time. The capital stock therein cannot be increased without the consent of each and every stockholder in this association.

### Article III.

The objects of this corporation shall be, and it is formed for the purpose of, the buying and selling of real estate, county and municipal and other bonds, of borrowing and lending money, of buying and selling promissory notes, bills of exchange, accounts, choses in action, fees and all other evidence of indebtedness, and of buying, holding, owning, mortgaging, leasing and selling real estate and personal property, except that it is not the intention to

engage in the business of petty money lending as defined in the act of the general assembly in the state of —, approved the — day of —, 19—.

The manner and plan of transacting said business shall be by the establishing an office wherein the officers and servants of this association shall be to transact business with the public and all persons, corporations or associations having business therein. It is the purpose to buy and sell all of the above-prescribed class of property that may be profitable or necessary for this association. In the purchase of property this association, if deemed advisable by the board of directors, is to pay cash or execute its note or notes of indebtedness, and mortgage any part of its property to secure its indebtedness or use any part of its property as collateral security to secure any debt. In selling its property, this association may sell for cash, or exchange, or sell on credit, receiving notes, mortgages or other evidences of indebtedness or collateral for the selling-price thereof that may be unpaid. The buying, holding, owning, mortgaging, leasing or selling real estate or personal property can only be done under the authority and order of the board of directors of this association. All mortgages, leases or deeds of conveyance or written contracts shall be signed by the association by the president thereof and attested by the secretary or treasurer with the corporate seal of this association.

It is the plan of the association, if the board of directors deem it advisable, to borrow money from time to time in such amount as is deemed proper to enable it to transact its business and make investments in loaning, buying and selling property as above designated.

It is the purpose of the association to lend money from time to time as may be deemed advisable by the board of directors, and also to lend money belonging to individuals, firms, associations or corporations that may be entrusted to it for that purpose, and it shall receive such commission for its services as may be proper and legal, and, if agreed upon, this association may take and receive promissory notes, bills of exchange, accounts, choses in action, collateral security and mortgages to secure said loans in

the name of this association as trustee. Also it may assign in writing or by delivery its own property or property held by it as trustee, all such promissory notes, bills of exchange, accounts, choses in action, mortgages, collateral securities, fees and all other evidence of indebtedness.

For the purpose of selling, conveying or transferring its own property for debt payable by it as trustee, it is the purpose to release and cancel of record on the full payment therefor, all mortgages, judgments, liens, evidences of debt, fees or any property of any kind due it, or due it as such trustees, as shown by any book or records of any kind or character whatever, containing the evidence of indebtedness to it or to it as such trustee. All such assignment, transfers and cancelations to be made by the president under the authority of the board of directors.

#### Article IV.

The names and places of residence of the incorporating members are as follows: —.

#### Article V.

The principal place of business of this association shall be in the city of —, state of —.

#### Article VI.

The term of existence of this association shall be — years.

#### Article VII.

The corporate seal of this association shall be of such material as to make a distinct, legible impression on paper, circular in form, with the corporate name around the margin thereof.

#### Article VIII.

Except as hereinafter modified, the election of directors of this association shall be made by the stockholders thereof. The holders of stock shall be entitled to one vote for each share of stock owned by him or her, and the officers of the association shall be selected by the directors thereof. It is agreed that so long as they remain stockholders and consent to serve and are qualified to serve, and are not suffering from any disability, that

——, —— and —— shall be the directors of this association, and it is further agreed among the incorporators as an inducement to enter into these articles of association that —— shall be the president of this association, and shall have active charge of the conduct of the business of this association, and shall give bond for the faithful discharge of his duties, with some surety company, payable to the association, to be approved by the stockholders in the sum of —— dollars, the expense of which bond shall be paid by the corporation, and to be kept in the personal custody of the treasurer. —— shall be secretary of the association, and —— shall be the treasurer of this association, and all funds belonging to the association shall be deposited in a bank to be selected by the stockholders, to the credit of the association, subject to the check of the president. The private funds of the incorporators shall not be deposited with the funds of the corporation.

#### Article IX.

The number of directors who shall manage the affairs of the association shall be —— and it is agreed that ——, —— and —— are the names of the directors who shall manage such affairs for the first year.

#### Article X.

It is the intention of the incorporators that the rights of the respective incorporators herein as between themselves are divided by a certain contract in writing entered into by the parties hereto, signed and proposed by —— and ——, dated —— day of ——, 19——, and accepted by, in writing, dated —— day of ——, 19——. The terms and conditions of which as between themselves may be modified in writing at any time by mutual consent of the stockholders.

Signed and sealed this the —— day of ——, 19——.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Here follows certificate of acknowledgment.)

**5616. Articles of incorporation for bank.**

For the purpose of organizing an association to carry on the business of a bank and of discounts and deposit, under the provisions of an act of the general assembly of the state of —, approved — day of —, 19—, and of the several acts amendatory thereof and supplemental thereto, the undersigned subscribers for the stock of said association do enter into the following articles of association:

**Article I.**

The name of this association shall be the — bank.

**Article II.**

The place where the business of this bank is to be carried on and conducted is the city of —, county of —, state of —.

**Article III.**

The amount of the corporate stock of said bank shall be — dollars, to consist of — shares of — dollars each.

**Article IV.**

The names and places of residence of the shareholders in said bank, and the number of shares held by each is as follows:

NAME.	RESIDENCE.	NUMBER OF SHARES.
_____	_____	_____
_____	_____	_____
_____	_____	_____

We, —, president, and —, cashier, of the — bank of — in county of —, state of —, hereby certify that the foregoing is a full and true and complete copy of the original articles of association of said bank.

\_\_\_\_\_, President.

\_\_\_\_\_, Cashier.

(Seal of bank.)

**5617. Articles of incorporation of fraternal lodge.**

Know all men by these presents that we, the undersigned, desirous of forming a fraternal and benevolent association, un-

der and pursuant to an act of the general assembly of the state of —, entitled "An act," etc., and approved — day of —, 19—, have formed and united on the following:

#### Article I. Name.

The name of this association shall be —.

#### Article II. Objects.

The objects and purposes of the formation of this corporation are declared not to be for pecuniary profits, either of its members, or of the association, but to inculcate, disseminate and promulgate a spirit of brotherhood founded upon the splendid principles of purity, aid and progress as inculcated, disseminated and promulgated by the supreme lodge of —, its constitution, laws, declarations, rituals and usages, and to have and possess all rights, powers and privileges given to corporations by common law to sue and be sued, to borrow money and secure the payment of the same by notes, mortgages, bonds or deeds of trust, upon its real or personal property; to rent, lease, purchase, own, hold, sell and convey such real estate and personal property as may be necessary and proper for the erection of buildings, for the renting and leasing of the same, and for all other necessary and proper acts in relation thereto made necessary and proper for the accomplishment of the objects and purposes of said incorporation; to establish and maintain a social club or home in accordance with the laws, rules and regulations prescribed by the supreme council of the —, in order thus to attain greater success in its effort to promote and promulgate the spirit of fraternalism; and in all things to be subordinate and in allegiance to the supreme council of —, or to such other authority as shall be designated by such supreme council in accordance with its rules, laws and regulations; and to be at all times and in all things consistent with existing laws of the state of —, and of the United States.

### Article III. Names and Residence of Incorporators.

The following are the names and places of residence of the incorporating members:

NAME.	RESIDENCE.
_____	_____
_____	_____
_____	_____

### Article IV. Place of Business.

The principal place of business of this corporation is declared to be in the city of —, county of —, state of —.

### Article V. Term of Existence.

It is declared that the term of the existence of this corporation shall be perpetual.

### Article VI. Corporate Seal.

The corporate seal of this association is an impression in the shape of a circle, in the center of which is a facsimile of —, and about the periphery is written these words and figures: —.

### Article VII. Election of Officers.

The manner of the election of all the trustees and officers of this association, who shall manage the business and prudential concerns of the said association, shall be by ballot at the second meeting night in — of each year, all of whom shall serve for a period of one year, except the secretary of said association, who shall be elected to serve for a period of three years, and in all respects the said election shall be held in strict conformity to the laws, rules and regulations of the supreme council of —.

### Article VIII. Number of Trustees and Officers.

The trustees, directors, managers and officers who shall manage the affairs of this association, together with the names of those who shall manage such affairs for the first year, are as follows: —, —, —, —, —.

In witness whereof, the parties do hereunto set their hands and seals, this the — day of —, 19—.

NAME.

ADDRESS.

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

(Here follow signatures and certificate of acknowledgment.)

### 5618. Change of name of corporation.

Whereas this association is purely charitable, and is organized under the laws of the state of —; and,

Whereas it is deemed by its board of trustees desirable and expedient to change the name under which it was originally organized, namely, the — Home for Friendless Women, to that of the — Home for Aged Women, and to adopt a new seal therefor;

Be it resolved by the board of trustees thereof that the — Home for Aged Women be and the same is hereby adopted as the name of the association, the same to take effect and become the new name of the association as soon as duly certified copies of this preamble and resolution shall be filed in the offices of the secretary of state of —, and with the recorder of — county of —.

Resolved further that the seal of this association shall be a circular disk with the words — around the margin of the disk, and the word — across the face of the center thereof.

And resolved further that the secretary of the board of trustees is hereby directed to file duly certified copies of these resolutions in the offices of the secretary of state and of the recorder of — county, and then provide a new corporation seal for the association in compliance with the above description thereof.

STATE OF —, }  
COUNTY OF —, } ss.

I, —, secretary of the — Home for Friendless Women, hereby certify that the above and foregoing are true copies of the preamble and resolutions adopted by the board of trustees of the — Home for Friendless Women, at a meeting thereof



held on the — day of —, 19—, and that said meeting was duly called and held for the purpose of considering the question of a change of name of said association.

In witness whereof, etc.

#### 5619. Merger of corporations.

This agreement of merger made and entered into this the — day of —, 19—, by and between — utilities company, a corporation under and pursuant to the provisions of an act of the general assembly of the state of —, entitled "An act," etc., approved the — day of —, 19—, and acts amendatory thereof and supplemental thereto; and the — light and power company, a corporation organized under and pursuant to the provisions of said act and acts amendatory thereof and supplemental thereto, witnesseth:

Whereas, the said two corporations, parties hereto, are organized for the same or similar objects and purposes, and are entitled to merge and unite into one corporation under and pursuant to the provisions of the act of the general assembly of the state of —, approved on the — day of —, 19—, entitled "An act," etc., approved — day of —, 19—, concerning and further regulating companies incorporated under said act, or said act and any act or acts amendatory thereof or supplemental thereto, and matters pertaining thereto, and declaring an emergency; and

Whereas, the board of directors of each of the contracting parties above named, by resolutions unanimously adopted and entered of record in the minutes of the proceedings of the respective boards aforesaid, have determined, subject to the approval of the stockholders of said respective corporations, to merge or unite into a single corporation, the said two corporations, parties hereto, and that said two corporations shall be merged and united into the — utilities company, under the terms and conditions in this joint agreement set forth and expressed. Pursuant to said determination of said board of directors, and in order to make effectual the proposed merger or union of said corporations, they do hereby, subject to the approval of the stockholders of said corporations respectively,

make and enter into the following joint agreement, under the corporate names and seals of the respective corporations, viz.:

#### Article I.

The ——— utilities company and said ——— light and power company, pursuant to the authority of the boards of directors of the said several corporations, are hereby merged and united into said ——— utilities company.

#### Article II.

The name of the merged or united corporations created hereby shall be ——— utilities company.

#### Article III.

The number of shares of the capital stock of said merged and united corporation shall be ——— dollars of the par value of ——— dollars each, making the total amount of the capital stock of said merged or united corporations ——— dollars, face value, of which said stock ——— shares, of the aggregate par value of ——— dollars shall be common stock, and ——— shares of the aggregate par value of ——— dollars shall be ——— per cent. cumulative, nonvoting preferred stock.

#### Article IV.

The respective rights of the holders of the preferred and common stock, and the terms upon which said stock is issued and to be issued shall be as follows: the holders of the preferred stock shall be entitled to receive only and as described by the board of directors, from the surplus or net profits of the company yearly dividends at the rate of ——— per cent. per annum, and no more, payable semiannually, at approximately on the ——— day of ——— and the ——— day of ——— of each year. The dividends on the preferred stock shall be cumulative, and shall be payable before any dividends on the common stock shall be paid or set apart, so that at no time shall any dividends be declared, set aside or paid on the common stock, unless at such time dividends on the preferred stock at the rate of ——— per cent. per annum shall have been paid for all previous years. In the event of any liquidation, dissolution or winding up of the companies

(whether voluntary or involuntary), the stockholders of the preferred stock shall be entitled to be paid in full both the par value of their shares and the unpaid dividends accrued thereon before any amount shall be paid in distribution to the holders of the common stock; and after the payment to the holders of the preferred stock of its par value and the unpaid accrued dividends thereof, the remaining assets and funds shall be distributed and paid to the holders of the common stock according to their respective shares and rights. The whole or any part of the preferred stock may be redeemed at any time at — per cent. of par and dividends cumulated and unpaid thereon at the date fixed for such redemption, which redemption may be effected upon such notice and in such manner as the board of directors may determine and as may be permitted by the statutes of the state of — in that behalf. Holders of the preferred stock shall have no voting rights.

#### Article V.

The holders of the capital stock of said — light and power company shall be entitled to receive in exchange for and in lieu of the — dollars, face value of capital stock of said — light and power company, issued and outstanding, — dollars face value of the common stock, and — dollars face value of the preferred stock, of the merged or united corporations; and by the surrender and cancelation of certificates for said — dollars face value of the capital stock of said — light and power company outstanding shall be entitled to receive certain certificates for said — dollars face value of common stock, and — dollars face value of preferred stock of said merged or united corporations; whereupon the said — dollars, face value of the capital stock of said — light and power company shall be considered as converted and merged into the said capital stock of said merged or united corporation.

The holders of the capital stock of said — utilities company issued and outstanding, to wit: — shares of the aggregate par value of — dollars, shall be entitled to receive in exchange for and in lieu thereof an equivalent amount face value of the common capital stock of the merged or united corpora-

tions, and upon surrender and cancelation of certificates for said stock so held by them the capital stock of said ——— utilities company shall be considered and treated as converted and merged into the capital stock of said merged or united corporation, so that there will remain thereupon ——— dollars face value of common stock and ——— dollars face value of preferred stock of the merged or united corporation, which may be issued, used or disposed of as the board of directors of the merged or united corporation may determine for its lawful purposes.

#### Article VI.

The term of existence of such merged or united corporation shall be ——— years from the ——— day of ———, 19—.

#### Article VII.

The number of directors who shall manage the affairs of said merged or united corporation for the first year and until their successors are chosen according to law, shall be ———, and the names of said directors are ———, ——— and ———, all of ———, state of ———.

#### Article VIII.

Upon the due execution of this joint agreement of merger by the said corporations, parties hereto, under their respective corporate names and seals, and the perfecting of said agreement, in the manner hereinbefore set forth, and the filing of said agreement in the office of the recorder of county of ———, state of ———, and a duplicate thereof in the office of the secretary of state, and the payment of the proper fees therefor, said corporations, parties hereto, shall thereupon be and become one corporation, possessing all the rights, privileges, powers and franchises of every kind and character, and being subject to all the liabilities and duties of each of such corporations so merged or united; and all and single, the rights, privileges, powers and franchises, of every kind and character, of each of said corporations, and all property, real, personal and mixed, and all debts due upon whatever amount as well for stock subscriptions as of other things in action, or belonging to each of said corporations, shall be vested in the merged or united corporation, and said merged

or united corporation shall possess all the rights, powers, privileges, and be subject to all the liabilities, obligations and duties imposed upon the united or merged corporation by the provisions of said act of — day of —, 19—, aforesaid.

The by-laws of said — utilities company shall be, remain and continue in force as the by-laws of the merged or united corporation until amended or changed in the manner in said by-laws described; and the officers of the said — utilities company now in office shall remain and continue in office as the respective officers of the merged or united corporation until their several and respective successors shall be elected.

And the board of directors of the said — utilities company shall be hereby authorized and empowered to do every act and thing not specifically prescribed in this agreement of merger which may be required by any law of the state of — for the carrying of the same into effect.

In witness whereof, said — utilities company has caused this agreement to be executed in duplicate in its name and behalf, by its president, and its corporate seal to be hereunto affixed, attested by its secretary under the authority and approval of its board of directors; and said — light and power company has caused this agreement to be executed in duplicate in its name and behalf by its president, and its corporate seal to be hereunto affixed, attested by its secretary, under the authority and approval of its board of directors, the day and date first above written.

(Seal.)

\_\_\_\_\_,  
President.

\_\_\_\_\_,  
President.

Attest: \_\_\_\_\_,  
Secretary.

(Seal.)

Attest: \_\_\_\_\_,  
Secretary.

STATE OF —, }  
COUNTY OF —, } ss.

Personally appeared before me, the undersigned, a notary public within and for said county and state, —, president, and

——, secretary, respectively of said —— utilities company, one of the corporations which executed the annexed and foregoing agreement, personally well known to me to be said president and secretary respectively, and acknowledged the execution of the annexed and foregoing agreement and act of merger as their free act and deed, and as the free act and deed of said —— utilities company; and personally appeared before me also ——, president, and ——, secretary, respectively, of —— light and power company, one of the corporations which executed the annexed and foregoing agreement and act of merger, personally well known to me to be such president and secretary, respectively and severally acknowledged the execution of the annexed and foregoing agreement and act of merger as their free act and deed and as the free act and deed of said —— light and power company.

Witness my hand and notarial seal this the —— day of ——, 19—.

\_\_\_\_\_,  
Notary Public.

My commission expires ——.

The undersigned, secretary of —— utilities company, one of the corporations which executed the annexed and foregoing agreement of merger, does hereby certify that such agreement was submitted to the stockholders of said —— utilities company at a meeting thereof, duly called and held at —— in the state of —— on the —— day of ——, 19—, for the purpose of taking the same into consideration; that said meeting was held separately from any meeting of the stockholders of the —— light and power company, whereat said agreement was considered or voted upon; that the holders of all the capital stock of said corporation were represented at said meeting in person or by proxy; that at said meeting said agreement of merger was duly considered, and a vote of the stockholders of said corporation by ballot was taken on the question of the adoption or rejection of the same, and that the holders of the capital stock of said corporation voted for the adoption of said agreement.

In witness whereof, I have hereunto subscribed my name and

affixed the seal of said corporation, on this the — day of —, 19—.

\_\_\_\_\_,  
Secretary of — Utilities Company.

(Here follows a similar certificate by the secretary of the — light and power company.)

**5620. Articles of association for automobile college.**

These articles of association made and executed in duplicate this — day of —, 19—, witnesseth:

**Article I.**

That the undersigned do hereby associate themselves as a corporation under the general law of the state of —, in force — day of —, 19—, authorizing the incorporation of voluntary associations, and acts amendatory thereof and supplementary thereto, for the purpose and under the conditions following, to wit: the corporate name of this association shall be and is —.

**Article II.**

The amount of the capital stock of this association, which is organized for pecuniary profit, is — dollars, divided into — shares, the par value of which shall be — dollars each; — dollars of which stock shall be common stock, and — dollars thereof shall be preferred stock. Upon said preferred stock dividends shall be paid annually at the rate of — per cent. per annum and such dividends shall be cumulative; such preferred stock to be redeemable at the option of said company, at any dividend period after one year after the date hereof at par and a premium of — per cent. in addition to the dividend or dividends then maturing, such stock to be absolutely redeemed by said company at its face value upon the expiration of — years from the date thereof. In no event shall any dividends upon the common stock be declared until all dividends which may have matured on the preferred stock shall have been paid, together with — per cent. interest upon any such dividends which may be overdue.

**Article III.**

This association is organized for the purpose of operating an automobile college and for the purpose of teaching and giving

instructions in the operation, care, buying and selling, building and repairing of automobiles, parts, supplies and necessities; and the plan of doing business shall be to conduct such company in the ordinary and usual manner in which such business is carried on.

#### Article IV.

The names and places of residence of each incorporating member are as follows: —, —, —, —, —, —, —, —.

#### Article V.

The principal place of business of said association shall be at —, state of —.

#### Article VI.

The term of existence of said association shall be — years.

#### Article VII.

The corporate seal of said association shall consist of a circular disk, around the circumference of which shall appear the words “— — —,” and through the center the word “—.”

#### Article VIII.

The board of directors of said association shall be elected annually at the annual meeting of the stockholders to be held as provided by the by-laws of such association, and the officers of such association shall be elected by said board of directors, and any vacancy in the board of directors shall be filled by said board until the next annual election.

The business and prudential concerns of said association shall be managed by said board of directors and such officers as may be elected by said board of directors.

#### Article IX.

The directors of said association shall be — in number, and the names and residences of those who shall manage the affairs of said association for the first year of its existence are as follows: —.

In witness whereof, the respective incorporating members



have hereunto subscribed their names, this the day and year first above written.

(Here follow signatures of incorporators and certificate of acknowledgment.)

### 5621. Articles of association of club.

We, the subscribers, voluntarily associate ourselves together under the laws of the state of —, in relation to voluntary associations of societies and clubs, and for that purpose adopt the following articles:

Article I. The corporate name of this association shall be —.

Article II. The association, not being organized for pecuniary profit, has no capital stock.

Article III. The object and purpose of this association shall be for the education and entertainment of the members belonging to said association.

Article IV. The names and places of residence of the corporate members are: —, city of —, state of —; —, city of —, state of —; and —, city of —, state of —.

Article V. The principal place of business of this association shall be in the city of —, county of —, state of —.

Article VI. The corporate seal of this association shall be a circular disk with the words “— — —” on the outer edge thereof, and the word “—” in the center of the disk.

Article VII. The business and prudential affairs of said association shall be managed by a board of three directors, a president, a vice president, a secretary and treasurer. The offices of secretary and treasurer may be held by one and the same person. The directors shall hold office for one year and until their successors are elected and qualified, and there shall be an annual election of directors, one director being elected each year after January 1, 19—.

Article VIII. The following officers and directors shall manage the business and prudential affairs of the association for the first year: —, president, —, vice president, —, secretary and treasurer, —, — and —, directors.

In witness whereof, the parties have hereunto set their names and seals this the — day of —, 19—.

NAMES.	RESIDENCE.
_____	_____
_____	_____
_____	_____

(Here follows certificate of acknowledgment.)

## 5622. Articles of incorporation of cafe company.

The undersigned subscribers voluntarily associate themselves under the provisions of an act of the general assembly of the state of — entitled "An Act," etc., approved — day of —, 19—, and all acts amendatory thereof, and hereby adopt the following articles of association:

### Article I.

The corporate name shall be —.

### Article II.

The amount of the capital stock shall be — dollars, which shall be divided into — shares of — dollars each.

### Article III.

The object shall be the building, owning and carrying on of hotels. The proposed plan of doing business is that the company may buy, build or lease, as may be to its advantage, a building or buildings, or a part or parts of a building or buildings for the purpose of carrying on the hotel business, or any part of the portion of such business, such as furnishing food or lodging, or both.

### Article IV.

The names and addresses of the incorporating members are as follows:

NAME.	RESIDENCE.
_____	_____
_____	_____
_____	_____

## Article V.

The principal place of business shall be in the city of —, state of —.

## Article VI.

The term of existence of this corporation shall be — years.

## Article VII.

The corporate seal shall consist of a circular disk with the name of the company inscribed around the outer edge thereof and the word “—” in the center thereof.

## Article VIII.

The directors shall be chosen annually by the stockholders, each owner of stock, as shown by the stock book, having one vote for each share of stock owned by him. All officers shall be chosen by a majority vote of the stockholders.

## Article IX.

The directors who shall manage the prudential affairs of the company shall be three in number. And the names of the directors for the first year are —, —, —, all of the city of —, state of —.

Witness our hands, this the — day of —, 19—.

(Here follow certificates of acknowledgment.)

**5623. Articles of association of workmen's association.**

This is to certify that the subscribers hereunto hereby associate themselves as a body corporate under the voluntary association act of the state of —, as now in existence or hereafter amended or added to, and for such purpose declare as follows:

## Article I.

The corporate name of this association shall be —.

## Article II.

The capital stock of this association shall be — dollars, divided into — shares of — dollars each.

## Article III.

The objects of this association are to buy, sell and import merchandise and conduct a grocery store and general mercantile operations.

## Article IV.

The incorporating members of this association with their addresses are as follows:

NAME.	ADDRESS.
_____	_____
_____	_____
_____	_____

## Article V.

The principal place of business of this association shall be in the city of —, state of —.

## Article VI.

The term of existence of this association shall be — years.

## Article VII.

The corporation seal of this association shall be circular in form with the name of the company inscribed on the perimeter, and having the word “——” in the center thereof.

## Article VIII.

The directors of this association shall be elected by a majority vote of the stockholders, each stockholder being entitled to one vote for each share of stock owned by him, or for which he may hold a duly executed proxy from another stockholder or stockholders of said association. The officers of the board of directors shall be elected by the members of the board of directors, and the managers and superintendents shall be appointed by the board of directors.

## Article IX.

The board of directors of this association shall be composed

of — members, and for the first year shall consist of the following named persons:

NAME.	ADDRESS.
_____	_____
_____	_____
_____	_____

In testimony whereof, etc.

(Certificate of acknowledgment.)

### COVENANTS.

See DEEDS; LEASE; MORTGAGES.

### COVENANTS NOT TO SUE.

See RELEASE.

## DEEDS.

See also, ACKNOWLEDGMENTS; BILLS OF SALE, AGREEMENTS TO SELL AND CONDITIONAL SALES; MINING AND MINERAL CONTRACTS; MORTGAGES; POWERS OF ATTORNEY; TRUSTS.

### FORMS OF COMMENCEMENT.

#### 5630. Of deed poll.

(1) Know all men by these presents that I, — of —, in the state of —, etc.

(2) To all to whom these presents shall come, greeting: Know ye that I, — of —, in the county of — and state of —. etc.

1. The deeds in use in the different states differ widely in form, most noticeably between deeds polls and deeds by indenture. In Alabama, Arkansas, Connecticut, Iowa, Maine, Massachusetts, Missouri, Nebraska, New Hampshire, North Carolina, Ohio, Oregon, Rhode Island, South Carolina, Texas and Vermont the usual form of conveyance is by deed poll. In all the other states the usual form is by indenture. It is to be observed, however, that in most states they may be and commonly are used interchangeably, the substance governing, rather than the form.

2. As to dower, courtesy, homesteads and releases thereof, reference should be had to the statutes and prescribed forms of the particular state. For text regarding deeds and conveyancing, see ante, vol. 4, §§ 3810-3919.

#### 5631. Of indenture of two parts.

This indenture, made this — day of —, 19—, between — of —, in the county of — and state of —, and — of said —, parties of the first part; and — of —, in the county of — and state of —, party of the second part, witnesseth:

1. If the deed is to contain any recitals they should follow here. These should be used only when it is necessary to explain the relations of the parties, or what their interests are, or the motives which lead to the conveyance. Ordinarily there is no necessity for any such explanation.

#### 5632. Of indenture to be indorsed.

This indenture made this — day of —, 19—, between the within-named —, of the one part, and the within-named —, of the other part.

## CONSIDERATION AND RECEIPT FOR SAME.

**5633. In deed poll.**

In consideration of — dollars to me paid by — of —, in the county of — and state of —, the receipt whereof is hereby acknowledged.

1. A statement of the consideration is not essential to a deed of conveyance. The true consideration may be proved though no consideration, or a false consideration, be stated.

2. See also, ante, vol. 4, § 3848.

**5634. In deed by indenture.**

That the said first party, for and in consideration of the sum of — dollars to him paid by the said second party (at or before the ensealing or delivery hereof), the receipt whereof is hereby acknowledged.

**5635. Where it appears from other parts of deed.**

In consideration of the matters, and of the covenants by the said — hereinafter recited and contained, and for the other considerations herein appearing.

**5636. Operative words.**

(1) Do hereby give, grant, bargain, sell and convey unto the said (grantee), etc.; (or) Do hereby convey and warrant, etc.; (or)

(2) Do hereby remise, release and forever quitclaim unto the said (grantee), etc.

1. See ante, vol. 4, § 3854.

## DESCRIPTION OF PARCELS.

**5637. Of a piece of land.**

(1) All that parcel of land situate in the town of —, county of —, state of —, bounded and described as follows, namely: on the north by the highway leading from — to —, there measuring — rods; on the west by land now or late of —, there measuring — rods; on the south by a stream known as the — river; and on the east by land now or late of —,

there measuring — rods; containing by estimation (or ad-measurement) — acres, or thereabouts.

(2) The — quarter of the — quarter of section number — (—), in the township number — (—), north (or south) of range number — (—), east (or west) of the principal meridian, in — county, state of —, containing — (—) acres, more or less.

(3) Lot number — (—) in — addition to the city (or town) of — in — county, state of —, as per plat thereof in plat book — at page — in the office of the recorder (or register of deeds, or other proper office) in — county, state of —.

1. See ante, vol. 4, § 3855.

#### **5639. Of undivided half.**

All that undivided moiety or equal halt part or share of the grantor of and in all that parcel of land, etc. (as above).

#### **5639. Of reversion after life tenancy.**

All that remainder or reversion in fee simple of the said grantor to take effect upon the decease of —, tenant for life, of and in all that parcel of land, etc. (as above).

#### **5640. With engine and machinery.**

Together with the steam-engine, machinery, fixtures and works attached to the mill, factory, workshop and buildings upon the premises hereinbefore described.

#### **5641. With right to use drains.**

Together with the right to enter and use all sewers and drains, now or hereafter made or passing under or along any of the streets adjoining said land, or in or upon the adjoining premises belonging to the vendor.

### **RESERVATIONS.**

#### **5642. Of right of way.**

Excepting and reserving unto the said grantor, his heirs and assigns, full and free right and liberty at all times hereafter, in



common with all other persons who may hereafter have the like right, to use said passage-way at all times and for all purposes connected with the use and occupation of the said grantor's other lands and houses adjoining the same.

1. See ante, vol. 4, §§ 3864-3866.

#### **5643. Of right to lay sewers and pipes.**

Excepting and reserving to the grantor, his heirs and assigns, the right at any time to lay down and construct sewers, drains and water-pipes in and upon said premises, and to keep and maintain the same for the convenience of the grantor's other land and buildings adjoining the granted premises.

#### **5644. Of growing crops.**

All the growing crops are reserved to the vendor, together with the right to enter upon the property for the purpose of tending, cutting and removing the same, and to bring upon the property all machines and instruments necessary thereto, and also a right to use the yards, barns and granaries on the premises for the purpose of threshing and caring for the same, the aforesaid rights to continue up to the —— day of —— next.

#### **5645. Of minerals and the right to work them.**

Saving and excepting out of the grant hereby made all mines and minerals under the said premises hereby conveyed, with power for the grantor, his heirs and assigns, to take all usual, necessary or convenient means for working, getting, laying up, dressing, making merchantable, and taking away the said mines and minerals, and also for the above purposes, or for any other purpose whatsoever, to make and repair tunnels and sewers, and to lay and repair pipes for conveying water to and from any manufactory or other building.

#### **5646. Of mines and seams of coal.**

Excepting out of this conveyance, and always reserving unto the said vendor, his heirs and assigns, all mines, veins and seams of coal, and all other mines and minerals lying and being within or under the said lands and hereditaments hereby conveyed, to-

gether with full and free liberty for the said vendor, his heirs and assigns, and his and their lessees, agents and workmen, and all other persons by his or their authority or permission, whether already been given or hereafter to be given at any time and from time to time, but by underground workings only, and without entering upon the surface of the said lands and hereditaments hereby conveyed, or any of them, to search for, get, work, take away and dispose of the said excepted premises, and also all or any other mines or minerals lying and being within or under any adjoining and neighboring lands, and with or without leaving any support to the surface of the said lands and hereditaments hereby conveyed, and whether such surface shall or shall not, by and subsidence thereof or otherwise, be depressed, lowered, damaged or destroyed, and to make, maintain and use any water-courses, ways and other works under any part of the said lands and hereditaments hereby conveyed as he the said vendor, his heirs or assigns, or other the persons availing themselves of these present powers shall think proper; he, the said vendor, his heirs and assigns, and such other persons as aforesaid not being in any manner liable or responsible for any depression, subsidence, damage or injury whatsoever which shall or may be caused or occasioned to the surface of the said lands and hereditaments hereby conveyed, or any part thereof, or to any erection, building, engine, machinery matter or thing now being or hereafter to be in the said lands and hereditaments hereby conveyed by the working and getting and carrying away, or by the having worked or gotten and carried away whether by the said vendor, his heirs and assigns, or any such other person as aforesaid, of the said excepted premises, or such other mines and minerals as aforesaid. To have and to hold all the same premises except as aforesaid, and subject to the exercise of all or any of the liberties and powers hereinbefore reserved unto and to the said purchaser, his heirs and assigns.

#### SUBJECT TO ENCUMBRANCES.

##### 5647. Subject to mortgage which grantee assumes.

The said premises are conveyed subject to a mortgage thereof made by — to —, dated the — day of —, and re-

corded with — deeds, book —, page —, for the sum of — dollars, which said sum, with interest thereon from the — day of — last, remains unpaid, and the said grantee hereby agrees to assume and pay the same as part of the consideration of this conveyance.

1. It is usual to name incumbrances to which the property is subject after the description and before the habendum; though they may properly be stated immediately following the habendum, or in fact as a part of it.

2. See ante, vol. 4, ch. 112.

#### 5648. Subject to lease.

Which said premises are sold subject to a lease thereof, made by — to —, bearing date the — day of —, 19—, for the term of — years, at the yearly rent of — dollars.

#### 5649. Subject to life estate.

Which said premises are conveyed subject to an estate for life devised to — of —, by the will of —, late of —, which said will was proved and allowed by the probate court in and for the county of — on the — day of —, 19—.

#### 5650. General words.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining, and the reversions, remainders, rents, issues and profits thereof.

1. This clause is intended to pass the easements, appurtenances and other rights belonging to the land or buildings conveyed. In ordinary cases, however, these rights pass without special mention.

### ESTATE CLAUSE.

#### 5651. General form.

And also all the estate, right, title, interest, property, claim and demand whatsoever of the said first party of, in, or to the above-described premises, and every part and parcel thereof, with the appurtenances.

1. This clause is in general superfluous, and is found in only a few forms now in use.

#### 5652. For conveyance under power.

And all the estate, etc., of the said first party in or to the said premises which he is able to appoint or dispose of

## HABENDUM.

**5653. General form for deed poll.**

To have and to hold the granted premises, with all the rights, easements and appurtenances thereto belonging, to the said —, his heirs and assigns, to his and their own use and behoof forever.

1. See ante, vol. 4, §§ 3867-3871.

**5654. General form for indenture.**

To have and to hold the said premises with the appurtenances unto the said second party, his heirs and assigns forever.

**5655. Subject to restrictions.**

To have and to hold, etc., subject to obligations and restrictions herein expressed and imposed on the said grantee, his heirs and assigns.

**5656. To trustees.**

To have and to hold, etc., unto the said second parties, their heirs and assigns and successors in said trust, but for the uses and purposes following, that is to say, etc.

**5657. To hold as partnership property.**

To have and to hold, etc., unto the said — and —, their heirs and assigns, jointly and as partners, as part of their copartnership estate, so that after the death of either of them the said partners, the survivor of them, or the heirs, executors or administrators of such survivor, shall have full power, without the concurrence of the executors or administrators of the one of them so first dying, to sell, mortgage, lease or otherwise dispose of the premises, or any part thereof, and to receive and give effectual discharges for any moneys arising from any such disposition, and that every such disposition or receipt shall be absolutely binding upon all persons having or claiming any interest in the partnership estate.

## COVENANTS.

**5658. By tenants in common.**

And each of them, the said — and —, so far only as relates to the equal undivided moiety of which he claims to be

seized as hereinbefore recited of the said premises, doth hereby for himself, his heirs, executors and administrators, covenant, etc.

1. See ante, vol. 4, §§ 3882-3887.

**5659. Proviso restricting grantor's liability to his own acts or defaults.**

Provided always, and it is hereby declared, that the covenants herein contained or implied of the said —, for the title to and further assurance of the said premises, shall not extend so as to render him liable in respect of the acts or defaults of the said — (a person conveying by his direction), or of any person claiming under the said —.

**RESTRICTIONS OR CONDITIONS.**

**5660. Building restricted to private or professional residence.**

That no building to be erected on said land shall be used otherwise than as a private dwelling-house, and no such building shall be used as a block of flats, or as a tenement-house.

1. See ante, vol. 4, §§ 3877-3881.

**5661. Prohibited use of premises.**

That no noxious or offensive trade shall be carried on upon said premises, or any trade or business which may be offensive or objectionable to the neighborhood.

**5662. Sale of intoxicating liquors prohibited.**

That no building to be erected on said land shall at any time be used for the sale of any intoxicating liquors, and no building shall at any time be used or occupied as an inn or hotel.

**EASEMENT CLAUSES FOR USE IN DEEDS.**

**5663. Grant of easement of light.**

Indenture made the — day of — between — (grantor) of the one part and — (grantee) of — of the other part:

Witnesseth that in consideration of the sum of — dollars paid by the said — (grantee), to the said — (grantor), the receipt whereof is hereby acknowledged, the said — (grantor) hereby grants to the said — (grantee) and his heirs full and

free right to the uninterrupted access and enjoyment of light over and across that piece of land situate in the city of — and county of — containing — square feet, more particularly described and delineated in the plan hereto annexed, to the existing windows of the dwelling-house recently erected upon land of the said — (grantee) adjoining said land of the said — (grantor) on the — side thereof. To hold the said easement unto the said — (grantee), his heirs and assigns.

In witness, etc.

1. See ante, vol. 4, ch. 112.

2. See post, 5707.

**5664. Grant of right of way to interurban railway company.**

This indenture, made this — day of —, 19—, between — of —, hereinafter called vendor, and — of —, hereinafter called the interurban company, witnesseth:

In consideration of — dollars, paid by the said interurban company, the receipt whereof is hereby acknowledged, the vendor does hereby grant, bargain, sell and convey unto said interurban company, its successors and assigns forever, a right of way in and over that certain strip of land described as follows: (here describe right of way with metes and bounds) for the said interurban company, its successors and assigns and its servants, agents and licensees at all times to freely pass and repass on the same, to build, construct, complete, operate and run an interurban railway on and over said lands of vendor as aforesaid, in whatsoever manner and according to whatsoever regulations said interurban company may devise or adopt.

In witness, etc.

1. See post, 5712.

**5665. Grant to erect telephone poles.**

This agreement, made this — day of —, 19—, between — of —, hereinafter called the telephone company, and — of —, hereinafter called the owner, witnesseth:

In consideration of the payment by said telephone company of the sum of — dollars per pole for each and every pole of a telephone line to be located by said telephone company upon the fol-

lowing described premises and real estate (here insert description), said owner does hereby grant unto said telephone company, its successors and assigns, the right, privilege and authority to construct, operate and maintain its lines of telephone, including the necessary poles, wires and fixtures, over, across and upon said above-described property; and also grant unto said company, its successors and assigns, the right, privilege and authority to cut down or trim any trees along the said lines necessary to keep wires clear by at least — inches; also to put in place necessary guy-wires and brace-poles and to attach guy-wires to trees along said line; and also said telephone company is fully, authorized and empowered to enter upon said premises for the purpose of constructing its said lines on and over the same as above provided.

In witness, etc.

1. See ante, vol. 4, § 3866.

#### 5666. Release of easement by indorsement.

Indenture made the — day of — between — (grantor), of the one part, and — (grantee), of the other part.

Whereas the said parties are respectively seized in fee as within mentioned; and whereas for the consideration hereinafter mentioned the said — (grantee) has agreed to release to the said — (grantor) the within-granted easement:

Now this indenture witnesseth that pursuant to said agreement and in consideration of the sum of — dollars now paid by the said — (grantor) to said — (grantee), the receipt whereof is hereby acknowledged, the said — (grantee) hereby releases and abandons unto the said — (grantor) all that easement (describing it) which by the within indenture was granted to said — (grantee), to the intent that such right shall henceforth cease and determine.

In witness, etc.

(Signature and seal of grantee.)

#### ATTESTATION CLAUSE.

#### 5667. Usual form.

Signed, sealed and delivered in the presence of, etc.

1. See ante, vol. 4, §§ 3899, 3900.

**5668. Attestation where there are interlineations or erasures.**

Signed, sealed and delivered by the within-named —, the words — having been previously interlined (or written on an erasure) in the — line of the first page, and the words — having been erased in the — line of the second page, in the presence of, etc.

**5669. Attestation of execution by mark.**

Signed, sealed and delivered by the within-named —, by setting his mark, he being unable to write, the same having been previously read over to him, in the presence of, etc.

**5670. Attestation where party is blind.**

Signed, sealed and delivered by the within-named —, the same having been first carefully read over to him, he being blind, in the presence of, etc.

**5671. Attestation of execution of deed by person deaf and dumb.**

The within-written indenture was signed, sealed and delivered by the within-named —, who, being deaf and dumb, but capable of reading, the same indenture was first read over by him, and he seemed perfectly to understand (or, if the witness can so attest, perfectly understood) the same, in the presence of us. (Witnesses.)

**5672. Where deed is executed under power of attorney.**

Signed, sealed and delivered by the above-named —, as the attorney of, and in the name and on behalf of, the above-named grantor, in the presence of, etc.

**5673. Attestation of deed executed by one of the parties in his own right and as attorney of another of them**

Signed, sealed and delivered by the above-named —, and as his own act and deed; and afterward, as the attorney, and with the name, and as the act and deed, of the above-named grantor, by virtue of a letter of attorney given to him, the said —, for that purpose, and dated the — day of —, 19—, in the presence of us. (Witnesses.)



**5674. Attestation of instrument intended to operate as escrow.**

Signed, sealed and delivered by the within-named grantor as an escrow, and placed in the hands of —, to be delivered up to the within-named grantee as the deed of the said grantor when the sum of — dollars shall have been paid by the within-named grantee to the said —, as the agent and on behalf of the said grantor.

**TESTIMONIUM CLAUSES.****5675. Of deed poll.**

In witness whereof we, the said — and —, have hereunto set our hands and seals this — day of —, 19—.

**5676. Of deed poll executed by trustees.**

In witness whereof we, the said — and —, trustees (executors, administrators or guardians), as aforesaid, have hereunto set our hands and seals this — day of —, etc.

**5677. Of deed poll executed by corporation.**

In witness whereof the said — corporation has caused its corporate seal to be hereto affixed, and these presents to be signed, executed, acknowledged and delivered, in its name and behalf, by —, its president, this — day of —, 19—.

**5678. Of deed poll executed by attorney.**

In witness whereof I, the said —, by —, my attorney, hereto duly authorized by a power of attorney dated the — day of —, and recorded with — deeds, book —, page —, have hereunto set my hand and seal this — day of —, etc.

**5679. Of indenture not requiring execution by other party.**

In witness whereof the said first party has hereunto set his hand and seal the day and year first above written.

**5680. Of indenture executed by corporation.**

In witness whereof the said — company, first party, has caused its corporate name to be hereunto subscribed, and its corporate seal to be attached, by —, its president; and the said second parties have hereunto set their hands and seals the day and year first above written.

**5681. Of indenture executed under power of attorney.**

In witness whereof — of —, attorney, by virtue of a power of attorney, under the hand and seal of the above-named —, dated the — day of —, and to be recorded herewith, has hereunto subscribed the name and set the seal of the said —, party of the first part, this — day of —, etc.

**SPECIAL CLAUSES.****5682. Trustees' deed under power in will.**

Know all men by these presents that we, — and —, both of —, in the county of — and the commonwealth of —, trustees under the last will of —, late of —, in the county of — and commonwealth aforesaid, deceased, which will was duly proved and allowed by the probate court for said county on the — day of —, 19—, do by virtue and in execution of the power to us given in and by said will, and of every other power and authority us hereto enabling, and in consideration of the sum of — dollars, and other good and valuable considerations, to us paid by — of said —, the receipt whereof is hereby acknowledged, hereby grant, bargain, sell and convey unto the said — a certain parcel, etc.

To have and to hold the above-granted premises, with all the privileges and appurtenances thereto belonging, to the said — and his heirs and assigns, to their own use and behoof forever.

In witness whereof we, the said — and —, trustees as aforesaid, hereunto set our hands and seals this — day of —, in the year 19—.

**5683. Trustees' quitclaim deed under a conveyance to them in trust.**

Know all men by these presents that we, — and —, acting in pursuance and by virtue of the powers in us vested by a conveyance to us from —, dated the — day of —, 19—, recorded with — deeds, book —, page —, and a declaration of trust as to the premises thereby conveyed, dated the — day of —, 19—, and recorded with — deeds, book —, page —, and of every other power and authority us hereunto enabling, and in consideration of — dollars paid by — of

—, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said — all that piece or parcel of land situate in —, county of —, state of —, and bounded and described as follows, etc., being part of the premises conveyed to us by said — by the above-recited deed.

This conveyance is made subject to the restrictions, stipulations and agreements mentioned or referred to in an agreement to which we are parties, dated the — day of —, 19—, recorded with — deeds, book —, page —, so far as said agreement concerns the premises hereby conveyed.

To have and to hold the above-released premises, with the rights, easements and appurtenances thereto belonging, to the said —, his heirs and assigns, to his and their use and behoof forever.

And we, the said — and —, for ourselves and our heirs, executors and administrators, do covenant with the said — and his assigns, that the premises are free from all encumbrances made by us, except as aforesaid; and that we will, and our heirs, executors and administrators shall, warrant and defend the same to the said — and his assigns forever, against the lawful claims and demands of all persons claiming by, through or under us, except as aforesaid, but against none other.

In witness whereof we, the said — and —, trustees as aforesaid, have hereunto set our hands and seals this — day of —, 19—.

1. See ante, vol. 1, § 509; vol. 4, § 3902.

#### 5684. Conveyance by assignee of bankrupt to purchaser in fee.

This indenture, made this — day of —, 19—, between — of —, assignee of the estate and effects of —, late of —, a bankrupt, of the first part; the said —, bankrupt, of the second part; and —, purchaser, of the third part, witnesseth:

Whereas a petition for adjudication in bankruptcy was on the — day of — filed in the District Court of the United States for the District of — against the said —, who was thereupon adjudged a bankrupt; and the said party of the first part was

chosen and appointed assignee of the estate and effects of said bankrupt;

And whereas the parcel of land and premises hereinafter described, forming part of the said bankrupt's estate, were on the — day of — offered for sale by public auction by the said assignee at —, according to certain printed conditions of sale, at which sale the said —, being the highest bidder, was declared the purchaser of the said premises at the sum of — dollars;

And whereas the said bankrupt, at the request of the said assignee, has agreed to concur in these presents, in the manner hereinafter appearing:

Now this indenture witnesseth, that in consideration of the sum of — dollars paid by the said — to the said assignee, the receipt whereof is hereby acknowledged, the said —, assignee as aforesaid, doth hereby remise, release and forever quitclaim, and the said bankrupt, in consideration of one dollar to him paid, the receipt whereof is hereby acknowledged, doth remise, release and confirm, unto the said — all that parcel of land, etc., to have and to hold, etc.

In witness, etc.

**5685. Conveyance by one tenant in common or joint tenant to another.**

(After recital of tenancy in common or joint tenancy:)

Now, in consideration of — dollars paid by the purchaser to the vendor, the receipt whereof the vendor hereby acknowledges, the vendor hereby, as tenant in common with the purchaser, grants and conveys (but if a joint tenant, releases and conveys) unto the purchaser all that share, estate and interest of the vendor of and in (parcels described). To hold the same unto the purchaser in fee simple to the intent that the purchaser may henceforth stand seized of the entirety of the said premises, freed from any estate or right of the vendor therein.

**5686. Deed of gift.**

This indenture, made this — day of —, 19—, between — of —, first party, and — of —, second party, witnesseth:

Whereas the second party is the only nephew of the first party; now, therefore, in consideration of natural love and affection which he has unto the said second party, and also for his better support and maintenance, the said first party does hereby give, grant, convey and confirm unto the said second party, his heirs and assigns forever, all that certain piece of property described as follows, to wit: (here insert description.)

To have and to hold the same together with all the tenements, hereditaments and appurtenances thereto belonging unto the said second party, his heirs and assigns forever.

In witness, etc.

1. See ante, vol. 1, §§ 206, 246; vol. 4, § 3849.

2. See Acknowledgments, ante, 5130-5138.

#### 5687. Deed of gift—Another form.

This indenture made this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the love and affection which the said first party has and bears unto second party, as also for the better maintenance, support, protection and livelihood of the said second party, does by these presents give, grant, alien and confirm unto the said second party, his heirs and assigns all that certain tract of land situate in the county of —, and state of —, and bounded and described as follows, to wit: (here describe land) together with all and singular the appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold all and singular the said premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns.

In witness whereof, etc.

#### GENERAL FORMS.

The forms under this head are those commonly used when none are prescribed by statute.

**5688. Warranty deed.**

Know all men by these presents that I, — of —, in the states of —, in consideration of — dollars to me paid by — of —, the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said — all that parcel of land situate in said —, and bounded as follows, etc.

To have and to hold the granted premises, with all the rights, easements and appurtenances thereto belonging, to the said —, his heirs and assigns, to his and their own use and behoof forever.

And I do hereby, for myself and my heirs, executors and administrators, covenant with the said grantee, his heirs and assigns, that I am lawfully seized in fee of the granted premises; that they are free from all encumbrances; that I have good right to sell and convey the same as aforesaid; and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee, his heirs and assigns, forever, against the lawful claims and demands of all persons.

And for the consideration aforesaid I, — of —, wife of the said —, do hereby release unto the grantee and his heirs and assigns all rights of or to both dower and homestead in the granted premises.

In witness whereof we, the said — and —, hereunto set our hands and seals this — day of —, 19—.

1. See as to deeds, in general, ante, vol. 4, §§ 3810-3919.

**5689. Quitclaim deed.**

Know all men by these presents that I, — of —, in the state of —, in consideration of — dollars to me paid by — of —, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said — all that parcel of land situate in said —, and bounded as follows, etc.

To have and to hold the granted premises, with all the privileges and appurtenances thereto belonging, to the said —, and his heirs and assigns, to their own use and behoof forever.

And I do hereby, for myself and my heirs, executors and ad-

ministrators, covenant with the said grantee and his heirs and assigns, that the granted premises are free from all encumbrances made or suffered by me, and that I will, and my heirs, executors and administrators shall warrant and defend the same to the said grantee and his heirs and assigns forever against the lawful claims and demands of all persons claiming by, through or under me.

And for the consideration aforesaid I, — of —, wife of the said —, do hereby release unto the said grantee and his heirs and assigns all rights of or to both dower and homestead in the granted premises.

In witness whereof we, the said — and —, hereunto set our hands and seals this — day of —, 19—.

#### 5690. Quitclaim deed—Another form.

This indenture witnesseth, that — of — county, in the state of —, release and quitclaim to — of — county, in the state of — for the sum of — dollars, the receipt of which is hereby acknowledged, the following real estate in — county, in the state of —, to wit:

In witness whereof, the said — ha— hereunto set — hand— and seal—, this — day of —, 19—.

————— (Seal.)

————— (Seal.)

————— (Seal.)

————— (Seal.)

(Acknowledgment.)]

#### 5691. Commissioners' deed in partition.

—, commissioner, appointed by the — circuit court of — county, in the state of —, in a case pending therein entitled — against —, and numbered — upon the dockets thereof, pursuant to the order of the said court in said cause made, and entered on page — of order book — of the records thereof, as such commissioner conveys to —, of — county, state of —, for the sum of — dollars, the following described real estate, situate in — county, —, to wit: (describe it).

In witness whereof, the said —, commissioner as aforesaid, has hereunto set his hand and seal this — day of —, 19—. (Add acknowledgment.) — (Seal).

Commissioner.

1. See also, post, 5700.

#### 5692. Deed of partition.

This indenture made this — day of —, 19—, between — of —, state of —, party of the first part, and — of —, state of —, party of the second part, and — of —, state of —, party of the third part, witnesseth:

That whereas said parties hereunto hold as tenants in common certain lands (here describe same), acquired as follows: —, and

Whereas the said parties have mutually agreed to make partition of said land so that each may hold his share thereof in severalty.

Now, therefore, the party of the first part shall have, hold, possess and enjoy in severalty, unto him, his heirs and assigns, for his share of said premises, the following portion thereof: —; and in consideration of the premises, and of — dollars, the parties of the second and third parts hereby grant, convey, set over and release unto the party of the first part, his heirs, and assigns, said last above-described parcel of real estate together with all appurtenances thereunto belonging, to have and to hold the same in severalty forever; and hereby warrant unto said first party, his heirs and assigns the quiet and peaceable enjoyment of said parcel of land against all lawful claimants or claims from and under said parties of the second and third parts, their heirs, assigns and personal representatives.

The second party shall hold, possess and enjoy in severalty for himself, his heirs and assigns, as his share of said land so held in common as aforesaid, the following portion thereof: —; and the parties of the first and third part hereby grant, set over, convey and release unto said second party, his heirs and assigns forever, the parcel of land last above described, together with appurtenances thereunto belonging (here insert above clause of



warranty unto second party, and proceed in the same manner with conveyance to third party by the first and second parties).

In testimony whereof, etc.

1. See also, post, 5700.

#### 5693. Guardian's deed.

—, guardian of —, as such guardian, by order of — circuit court of — county, in the state of —, entered in order book of said court, on page —, conveys to — of — county, in the state of — for the sum of \$—, the following real estate, in — county, in the state of —, to wit: —.

In witness whereof, the said —, guardian as aforesaid, ha— hereunto set — hand—, and seal—, this — day of —, 19—.

— (Seal).

—, Guardian.

#### 5694. Deed of exchange of lands.

This indenture, made this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the said first party hath given, granted and conveyed, and by these presents doth give, grant and convey unto said second party, his heirs and assigns the following described real estate situated in the county of —, state of —, to wit: (here describe land), with all and every of the appurtenances thereunto belonging, in exchange of and for the lands hereinafter mentioned and described, of the said second party: To have and to hold the said premises, with the appurtenances, to the said —, second party, his heirs and assigns, forever. And the said —, first party, doth covenant, that (here insert such covenants as may be necessary). And the said —, second party, hath likewise, on his part, given, granted and conveyed, and by these presents doth give, grant and convey, unto the said —, first party, his heirs and assigns, all that part of the following described real estate situated in the county of —, state of —, and described as follows, to wit: (here describe land), with all and every of the appurtenances thereunto belonging in exchange of and for the premises first above described: To have and to hold the above-

granted premises, with the appurtenances, to the said —, first party, his heirs and assigns forever, as aforesaid. And the said —, second party, doth covenant as follows: (here insert covenants).

In witness whereof, the said parties have hereunto set their hands and seals, the day and year above written.

\_\_\_\_\_  
\_\_\_\_\_

### 5695. Deed of trust.

This indenture made this — day of —, 19—, between — of —, state of —, party of the first part, and —, state of —, party of the second part, witnesseth:

That the first party, in consideration of — dollars paid to him by the second party, the receipt of which is hereby acknowledged, hereby sells, grants, conveys and releases unto said second party, his heirs and assigns forever, the following described real estate: (here describe land), to have and to hold, together with the appurtenances and their part thereof upon trust and use herein limited and declared, to wit: upon trust to receive the rents and profits of said premises and apply the same to the use of — during the term of her natural life and at her death to convey said premises to — and his heirs.

In witness whereof, etc.

### 5696. Administrator's or executor's deed.

(Under order of court.)

Executor — of the last will of —, deceased (or administrator of the estate of —, deceased), as such executor (or administrator) — by order of the — circuit court, of — county, in the state of —, entered in order book — of said court, on page —, conveys to — of — county, in the state of —, for the sum of — dollars, the following real estate, in — county, in the state of —, to wit: —.

In witness whereof, the said —, administrator, or executor

—, as aforesaid, has hereunto set his hand and seal, this — day of —, 19—.

(Add acknowledgment.) — (Seal).

—, Executor or administrator.

—.

### 5697. Mining deed.

This indenture, witnesseth: That — of — county, state of —, in consideration of the sum of — dollars, the receipt of which is hereby acknowledged, hereby grants, bargains, sells, conveys and quitclaims unto — of — county, state of —, the following described mining claim, situated in the — mining district, county of —, state of —, to wit: (here describe) being the same claim the notice of location of which is recorded in the office of the — of the county of —, state of —, in book — of —, on page —. To have and to hold the same together with all the ores and minerals, dips, spurs and angles thereof and all the rights thereto pertaining, to him and his heirs and assigns forever.

Witness my hand and seal this — day of —, 19—.

—.

Acknowledgment.

1. See MINING AND MINERAL CONTRACTS.

### 5698. Deed to correct mistake in prior conveyance.

This indenture, made this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

Whereas, said first party did, on or about the — day of —, 19—, execute and deliver to party of the second part, for the consideration therein mentioned, a conveyance hereinafter more particularly described, which said conveyance is recorded in the office of the recorder of deeds of the county of —, state of —, book No. —, page —; and whereas, in said deed of conveyance, by mistake of the scrivener an error was made therein as follows: (here state error); and whereas it is desirable and expedient to correct said error; now, therefore, this indenture witnesseth that the said party of the first part, in consideration

of the premises and of one dollar to him paid by the party of the second part, hereby grants, conveys, releases and confirms unto the said party of the second part, his heirs and assigns, all that tract of land situated in the county of —, state of —, and bounded and described as follows, to wit: (here describe tract), together with all and singular the appurtenances thereunto belonging.

In witness whereof, etc.

**5699. Deed of right of way.**

This indenture witnesseth:

That in consideration of the sum of — dollars in hand paid me by grantee hereinafter mentioned, the receipt whereof I hereby acknowledge, I do hereby grant, bargain and sell unto — grantee herein, his heirs and assigns, the free and uninterrupted use, liberty and privilege of a right of way — feet in width extending from (here state extent of way); together with the free use of said way to and for said grantee, his heirs and assigns, at all times and seasons for the purpose of (here state purpose for which way is to be used).

To have and to hold all and singular the aforesaid privileges to the proper use and enjoyment by said grantee, his heirs and assigns as aforesaid.

In witness whereof, I have hereunto set my hand and seal this — day of —, 19—.

1. See EASEMENTS, post, 5705-5712.

**5700. Referee's deed of partition.**

This indenture, made this — day of —, 19—, between — of —, county of —, state of —, a referee appointed by the — court, of the first part, and — of — county, state of —, of the second part, witnesseth:

That, heretofore, at the — term of said court held in the city of —, county of —, state of —, on the — day of —, 19—, before —, the regular judge of said court, it was among other things ordered, adjudged and decreed by said court in an action pending between —, plaintiff, and —, defendant, that the premises herein mentioned, described and set

forth in the plaintiff's complaint in said action, or so much thereof, as is hereinafter particularly described, be sold under the direction of —, referee, appointed by said court, at public auction in the county where said premises are situated, upon public notice first given by said referee of the time and place of such sale, together with a brief description of said premises, and

Whereas said referee did, in pursuance of said order of said court, on the — day of —, 19—, sell at public auction, at —, in the city of —, county of —, state of —, said premises herein described, after giving said notice of the time and place of such sale, to the party of the second part hereto, for the sum of — dollars, the bid of said second party being the highest bid for said premises.

Now, therefore, this indenture witnesseth that the party of the first part, in order to carry into effect the decree of said court, and by virtue of the statute in such cases made and provided, and in consideration of — dollars to me paid by the said second party, receipt of which is hereby acknowledged, I hereby convey unto the party of the second part, and to his heirs and assigns forever, the following described real estate: —, together with all appurtenances, rights, title, interest and privileges thereunto belonging, to have and to hold said premises unto said second party, his heirs and assigns forever.

In witness whereof, —, said referee, has hereunto set his hand and seal, this the — day of —, 19—.

(Certificate of acknowledgment.)

1. See also, ante, 5691, 5692.

## SEPARATION DEED.

**5701. Deed of separation, husband allowing the wife an annuity during their joint lives, with usual covenants.**

Indenture made this — day of —, 19—, by and between — (husband), of —, party of the first part; — (wife), of —, party of the second part; and — and — (trustees), both of —, parties of the third part. Whereas unhappy differences have arisen between the said husband and wife, by reason

whereof they have agreed to live separate and apart from each other for the future, and to enter into the arrangement hereinafter contained; and whereas the said husband has issue by the said wife — children, that is to say (state their names and ages); and whereas the said trustees have, at the request of the said wife, agreed to act as trustees for the purpose of the arrangement intended to be hereby made, and also to enter into the covenants and obligations hereinafter contained:

Now this indenture witnesseth, that pursuant to said agreement, and for the considerations herein appearing, the said husband doth hereby, so far as the agreements and provisions hereinafter contained are or ought to be performed or observed by him, or his heirs, executors or administrators, covenant with the said wife, her executors and administrators, and also separately with the said trustees, their executors and administrators; and the said trustees do hereby respectively, so far as the agreements and provisions hereinafter contained are or ought to be performed or observed by the said wife, or the said trustees, or their respective heirs, executors, or administrators, or any of them, covenant with the said husband, his executors and administrators, in manner following, that is to say:

It shall be lawful for the said wife, at all times hereafter, to live separate and apart from the said husband, and free from his marital control and authority, as if she were sole and unmarried, and to reside from time to time at such place as she may think proper, without any interference whatever on the part of the said husband.

Neither of them, the said husband and wife, shall molest the other of them, nor compel, nor endeavor to compel, the other of them to cohabit or dwell with him or her by any legal proceedings for restitution of conjugal rights, or otherwise howsoever.

Neither of them, the said husband and wife, shall take any proceedings against the other of them to obtain a divorce or judicial separation in respect of any misconduct which has heretofore taken place, or is alleged to have taken place, on the part of the other of them.

The said husband shall, during the joint lives of himself and

the said wife, pay to her, the said wife, the sum of — dollars per annum as her separate estate, but so that she shall not have power to anticipate the same, in quarterly payments, on the usual quarter days, the first payment to be made on the — day of — next.

All the wearing apparel and personal ornaments of the said wife, and all movable personal property belonging to her, now in her possession, shall belong to her as her separate estate, independently of the said husband. All the property of the said wife, both real and personal, now held by her, or which shall hereafter come to her, shall be and remain her sole and separate property, free from all rights of the said husband, with full power to her to convey, assign or deal with the same as if she were single. The said husband will, from time to time, execute all such deeds and papers as may be necessary to enable her to sell, assign or deal with her said property.

On the death of the said wife in the lifetime of the said husband, all her separate estate, whether real or personal, which she shall not have disposed of in her lifetime or by will, shall, subject to her debts and engagements, go and belong to the persons or person who would have become entitled thereto if the said husband had died in the lifetime of the said wife.

If the said wife shall die in the lifetime of the said husband, he shall permit her will to be proved, or administration upon her personal estate and effects to be taken out by the person or persons who would have been entitled to do so had the said husband died in her lifetime.

The said wife shall have the sole custody and control of (here name children), and of their education and bringing up, until they respectively attain the age of — years, without any interference whatsoever on the husband's part.

If and so often and so long as any child or children of the said husband and wife shall, during the joint lives of the said husband and wife, be living with or under the control of the said wife, the said husband shall pay to the said trustees or trustee, in trust for the said wife, the sum of — dollars per annum in respect of each such child being under the age of — years,

and the sum of — dollars per annum in respect of each such child being over the age of — years, and under the age of twenty-one years, and unmarried, such respective yearly sums to be payable quarterly on the usual quarter days, and to be applied by the said wife in or toward the maintenance and education, or otherwise for the benefit of such children or child, but without liability to account so long as she shall maintain and educate such children or child to the satisfaction of the said trustees or trustee.

The said husband and wife shall respectively at all convenient reasonable times, to be settled in case of dispute by the said trustees or trustee for the time being, have access to and communication with the children or child for the time being living with or under the control of the other of them.

The said — and — (boys) shall, and when they respectively attain the age of — years, be placed at the expense of the said husband at such schools as he, with the wife's written consent, shall from time to time determine.

It shall be lawful for the said trustees or trustee, if circumstances shall arise which in their or his opinion render it absolutely necessary for the welfare of the children or child for the time being living with or under the control of either of them, the said husband and wife, to remove such children or child, and to place them, him, or her with or under the control of the other of them, the said husband and wife.

The said wife, her heirs, executors and administrators, and also the said trustees, their respective heirs, executors or administrators shall at all times hereafter keep indemnified the said husband, his heirs, executors and administrators from all debts and liabilities heretofore or hereafter to be contracted or incurred by the said wife, and from all actions, proceedings, claims and demands, costs, damages and expenses whatsoever in respect of any such debts and liabilities.

In case the said husband shall be obliged to pay any sum or sums of money for or on account of any debt or liability heretofore or hereafter contracted or incurred by the said wife, or in case the said wife shall at any time take any proceedings against the said husband for restitution of conjugal rights or otherwise



for compelling him to cohabit with her, or shall at any time directly or indirectly molest the said husband, then and in any such cases the said annuity of — dollars shall cease to be payable.

In case the said husband shall at any time or times hereafter be called upon to pay or discharge, and shall actually pay or discharge, any debt or liability heretofore or hereafter contracted or incurred by the said wife, then and in every such case it shall be lawful for the said husband, at his option, instead of availing himself of the rights secured to him by the preceding paragraph, to deduct and retain out of the said annuity the amount which he shall have so paid, together with all costs and expenses.

Each of them, the said husband and wife, or their respective heirs, executors or administrators, shall at any time execute and do all such assurances and things as the other of them, his or her heirs, executors, administrators or assigns, or the said trustees or trustee shall reasonably require for the purpose of giving full effect to these presents, and the covenants, agreements, and provisions herein contained.

Provided always, and it is hereby agreed, that if the said husband and wife shall be reconciled and return to cohabitation, or if their marriage shall be dissolved, then and in such case all the covenants and provisions herein contained shall become void, but without prejudice to any act previously made or done hereunder, or any proceedings on the part of any of the parties hereto in respect of any antecedent breach of any of the covenants or provisions herein contained.

In case of the death or resignation of either of said trustees, the right to appoint a new trustee in place of said — shall be vested in the said husband, and the right to appoint any new trustee in place of said — shall be vested in the said wife.

In witness, etc.

1. See ante, vol 1, § 414; vol. 2, § 755.

2. The following proviso may be added:

Provided always, and it is hereby agreed, that so long as the said wife shall reside with her father, one of the said trustees, the said annuity or yearly sum of — dollars shall be paid to the trustee at the times and in manner aforesaid in trust for the said wife; and the receipt of the said trustee, signed by him, shall be a good and sufficient discharge for so much of the said annuity or yearly sum of — dollars as shall be therein acknowledged or expressed to be received, and that the said husband shall not be bound to see to the application thereof.

**EASEMENTS.**

See DEEDS; PARTY WALLS.

**5705. Easement of way over private road.**

Indenture made the — day of — between — (grantor), of the one part, and — of — (grantee), of the other part.

Whereas the said — (grantor) is seized of an estate in fee simple in possession free from encumbrance of a parcel of land situate in the town of —, and shown on the plan hereto annexed, across which there is a private road shown on said plan by dotted lines extending from the highway to a lane known as — lane;

And whereas the said — grantee is seized in fee simple of a piece of land containing — acres or thereabouts, also shown on said plan;

And whereas the said — (grantor) has agreed, in consideration of the sum of — dollars to be paid by said — (grantee), to grant an easement or right of way over said private road:

Now this indenture witnesseth that in pursuance of said agreement and in consideration of the sum of — dollars paid by the said — (grantee) to said — (grantor), the receipt whereof is hereby acknowledged, the said — (grantor) hereby grants unto the said — (grantee), his heirs and assigns, the full and free right for him and them, his and their tenants, servants, visitors and licensees, in common with all others having carts, carriages or other vehicles, for all purposes connected with the use of said — grantee's land, to pass and repass along said private road between the points before named: To hold said easement to the said — (grantee), his heirs and assigns, as appurtenant to said land of — (grantee).

In witness, etc.

1. Reformation of defective conveyance, see ante, vol. 3, § 2374.

2. Statute of frauds, see ante, vol. 2, § 1267.

**5706. Grant of right to take water from well.**

Indenture made the — day of — between — of the first part and — of the second part.

Whereas said party of the first part is the owner in fee simple of a parcel of land in the town of — in the county of — on which he has sunk a well, and agreed with the party of the second part to sell to him the easement hereinafter described :

Now this indenture witnesseth as follows :

In consideration of — dollars paid by the party of the second part, the said party of the first part hereby grants unto said adjacent owner, his heirs and assigns, full and free right and authority by himself or themselves, his or her servants or agents to enter upon the land of the party of the first part and to pass and repass by a footpath to and from said well and to take water from the well pump for all domestic purposes to the use of the said adjoining owner, his heirs and assigns forever, or at the option of said adjoining owner, his heirs or assigns, he or they have the right and authority to lay a pipe from said well to the house on the land of said adjoining owner and by a pump or other means to draw water from said well for all domestic purposes in common with the well owner, his heirs and assigns, using the same for domestic purposes. The said well owner hereby covenants with said adjacent owner, his heirs and assigns, that he will keep the well in good order and free from contamination.

In witness, etc.

(Signature and seal of well owner.)

**5707. Contract for easement of light.**

Whereas, I, — of —, in the county of —, have lately opened — windows or lights from my shop or premises in — aforesaid, which face into or overlook the back yard or grounds of a dwelling-house and premises of — of —; now I do hereby declare that the windows or lights above mentioned shall remain open and unlocked upon the leave and indulgence of the said —, and that I will, upon the request of him or his executors, administrators or assigns, to be made at any time hereafter, wall or block up the same; and in the mean-

time, until such request is made as aforesaid, I hereby promise, in consideration of such indulgence, to pay unto the said —, his heirs, executors, administrators or assigns the sum of \$— yearly and every year, to commence and take effect from the day and date hereof.

Dated the — day of —, 19—. —.

Witness, —.

1. See ante, 5663.

**5708. Agreement between householder and owner of adjoining land as to right to eavesdrip.**

Agreement made this — day of — between — (householder), of the one part, and — (adjoining landowner) of the other part.

Whereas the eaves of the dwelling-house of said — overhang the land of the said —, and water from the roof of said householder falls upon the land of said adjoining landowner it is hereby agreed that the overhanging of the eaves of said dwelling-house shall be deemed to be with the consent of said adjoining landowner, and the falling of water from the eaves upon the land of said adjoining owner shall be deemed to have been continued with the express license and consent of said adjoining owner, to the extent that neither the owner of the dwelling-house nor any person claiming under or through him, shall acquire any right of eavesdrip or any easement or other right in respect of said overhanging eaves.

The owner of said dwelling-house shall compensate the said adjoining landowner in respect of any damage or injury that may at any time hereafter be done to the land of said adjoining owner, his heirs or assigns by reason of said overhanging eaves. The owner of the dwelling-house shall within one month after the service of a written notice on him by said adjoining landowner, so requiring, remove the overhanging eaves.

In witness, etc.

(Signature and seals of both parties.)

**5709. Grant of right of sewage.**

Indenture made this — day of — between — (grantor) of the one part and — (grantee) of the other part:

Whereas the said grantor is seized in fee simple of a parcel of land situate at — in the county of —, and the grantee is seized in fee simple of an adjoining parcel of land;

And whereas the grantor has constructed a sewer, or drain, beneath the surface of his land from his dwelling-house to the public sewer, and has agreed with the grantee to grant to him the right to use his said sewer or drain as hereinafter expressed for the consideration hereinafter mentioned:

Now this indenture witnesseth that in pursuance of the said agreement and in consideration of the sum of — dollars now paid by the said grantee, the said grantor hereby grants unto the said grantee, his heirs and assigns forever, the free right of using the said sewer or drain for the passage of sewage water and soil from the grantee's land and house adjoining the grantor's said land: And for this purpose the grantee shall make and forever hereafter maintain such connection with the grantor's said sewer or drain as may be reasonable and proper, making good, nevertheless, at his own expense, all damage which may be caused to the surface of the grantor's parcel of land in making such connections, repairs and maintenance.

In witness, etc.

(Signatures of both parties.)

#### 5710. Grant of right of sewage—Another form.

This indenture, made this the — day of —, 19—, between — of —, state of —, of the first part, and — of —, state of —, of the second part, witnesseth:

That whereas the first party is seized in fee simple of the following described real estate: —, and

Whereas the first party has constructed an underground sewer or drain in said above-described real estate, and has connected said drain to a public sewer, and has agreed with said second party to permit him to use said sewer or drain:

Now, in pursuance of said agreement and in consideration of — dollars, receipt of which is hereby acknowledged, the first party grants unto said second party, his heirs and assigns forever, the right to use said sewer or drain as a passway for sewage and water from the land of the second party, adjoining

the land of the first party. And for such purpose, the second party shall make and maintain such connections with the grantor's sewer as shall be reasonable and proper at his own cost and expense, and shall pay to the first party all damage which may result to the land of the first party in the making of said connection with the sewer of said first party, and in the making of repairs thereto.

In witness whereof, etc.

**5711. Agreement between adjoining landowners as to continuance of encroachment.**

Agreement made this —— day of ——, 19——, between —— of ——, first party, and —— of ——, second party. Whereas the said first party is the owner of a building situate on the northerly side of —— street, in the said city of ——, and the said second party is the owner of a lot of land adjoining thereto on the easterly side thereof; and whereas by mistake a portion of the east wall of said building belonging to said first party encroaches on the land of the said second party, it is now mutually agreed as follows:

The said encroachment of the said east wall of the building belonging to the first party shall be deemed to have been made, and the continuance thereof shall be deemed to be, with the express license and consent of the said second party, to the intent that the said first party shall not acquire any easement or right in respect thereof.

The said first party shall pull down and remove the said wall so far as the same encroaches upon the land of the said second party within —— months after the said second party shall have given to the said first party, or to the owner or occupant for the time being of the said house, a notice in writing in that behalf, and every such notice shall be sufficient if left at the said house, although not addressed to any person by name or description.

The respective owners for the time being of the said lots of land shall have the benefit of and be bound by this agreement, and shall be deemed to be included wherever the names of the said parties hereto respectively occur.

In witness, etc.

**5712. Grant of right of way to interurban railway.**

This indenture, made this — day of —, 19—, between — of —, state of —, of the first part, and —, an interurban railway company of the state of —, of the second part, witnesseth:

The party of the first part, in consideration of — dollars paid by the party of the second part, receipt of which is hereby acknowledged, hereby sells, grants and conveys unto the second party and its successors and assigns forever a right of way into and over a strip of land — feet wide and — long, particularly described as follows: —, upon which right of way second party shall have the right to construct railroad tracks and operate cars thereon and do all other acts necessary in the maintenance and operation of said railroad, in accordance with said regulations as said second party may adopt.

In testimony whereof, etc.

(Certificate of acknowledgment.)

1. See ante, 5664.

**EMPLOYMENT CONTRACTS.**

See SERVICE CONTRACTS.

**5715. Contract between clerk and employer.**

This agreement, made this — day of —, 19—, between — of —, hereinafter called the party of the first part, and — of —, hereinafter called the party of the second part, witnesseth:

The said party of the first part, in consideration of the promises and agreements of the party of the second part herein contained, hereby promises and agrees to enter into the employ of the said party of the second part for a period of — years from date hereof as —, and to faithfully, honestly and diligently perform such duties as may be required of him in that capacity by said party of the second part.

In consideration whereof, the party of the second part promises and agrees to pay to said party of the first part the sum of — dollars per week at the end of each and every week during said period.

It is mutually agreed that this contract may be rescinded and annulled at any time before the expiration of said period, if said party of the first part shall fail to perform his duties properly and diligently, or shall fail to be temperate and honest.

In witness, etc.

1. Statute of frauds, see ante, vol. 2, §§ 1279, 1280, 1283, 1285.

2. Sunday laws, see ante, vol. 2, §§ 925-957.

3. Contracts of agency, see ante, vol. 1, § 452.

**5716. Contract to clear land.**

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part.

Witnesseth: Said party of the first part agrees to stump and clear ready for the plow, and to build a stump fence around and across through the middle, east and west, of the following described lands, to wit: (here insert description).

Said work to be commenced on or before the — day of



—, and to be completed on or before the — day of —.

Said second party to pay said first party the sum of — dollars per acre, as follows: — dollars per acre to be applied on payment of a certain chattel mortgage given by said first party to said second party, and the balance of — dollars per acre to be paid to the first party as fast as said land is ready for the plow and approved by said second party. Said fence to be built at least — feet high, and stumps to be laid close together and laid straight

In witness whereof, etc.

1. Johnson v. Henry, 127 Mich. 548.

### 5717. Contract of employment as mining engineer.

This agreement made and entered into this — day of —, by and between —, Mining Company, party of the first part, and —, party of the second part, witnesseth:

That the said first party does hereby employ the said second party as its consulting engineer in the operation of its mining property in the state of — and agrees to pay the said second party the sum of \$— per month from date hereof, payable monthly. Said salary to be increased \$— per month for each — foot of additional work on first party's mining property in which the ore-body is revealed, or from the time the ore-body on said property shall be reached by cross-cutting, or otherwise from each — foot level below the present level of said works which has now reached a depth of — feet, more or less.

It is further mutually understood and agreed that this contract shall continue in force for one year from date hereof, but the progressive increase of salary as above mentioned shall cease when the same shall have reached the sum of \$— per month.

The second party further agrees in consideration of the payment of the above monthly salary, to devote his entire time and energy to said employment and to the operation and development of said mining property, and to consult with the officers, agents and employes of first party, and at all times shall give counsel and advice in reference to the operation and development of said mining property.

In witness whereof, the parties have hereunto set their hands and seals this day and year above written.

**5718. Agreement between physician and patient.**

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, hereinafter designated as patient, and —, party of the second part, hereinafter designated as the physician, witnesseth:

That in consideration of the covenants and agreements herein contained said patient does hereby engage and contract with said physician for professional services rendered and hereafter to be rendered by said physician at any time or place, during any spell of sickness or indisposition which said patient may be subject to during the remainder of his, the said patient's, natural lifetime;

That in the event of sickness of said patient said physician shall employ such methods of treatment as to said physician may seem best and most expedient;

That all medicines, instruments or appliances necessary to be used in the discharge of said physician's duties in cases of indisposition are to be furnished and provided by said physician at his own expense;

That in case of any critical illness of said patient, when it is deemed necessary to call other physicians in consultation, said physician may call the physician or physicians as his judgment may dictate;

That the fees and expenses of said consulting physician or physicians shall be paid by said physician herein;

That in consideration of said services rendered and to be rendered, said patient does hereby agree to pay the said physician the sum of — dollars to be paid immediately or as soon as practicable after the death of said patient and out of his estate.

It is further understood and agreed between the parties hereto that this contract shall bind said patient, his heirs, executors and administrators.

In witness whereof, said parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

**5719. Contract to raise and deliver sunken logs.**

This agreement, made this \_\_\_\_ day of \_\_\_\_, 19—, by and between \_\_\_\_ of \_\_\_\_, state of \_\_\_\_, party of the first part, and \_\_\_\_ of \_\_\_\_, state of \_\_\_\_, parties of the second part, witnesseth.

That the said party of the first part, in consideration of the covenant on the part of the parties of the second part hereinafter contained, doth covenant and agree to and with the said second parties that it will raise, bank, drive, sort and deliver to the respective mills of said second parties situated upon lake \_\_\_\_, in said county and state, all of their deadhead and sunken logs, and being in the \_\_\_\_ river and its tributaries, and on or in the bayous, flats, cut-offs and marshes adjacent thereto, and that each year after 19— said first party will make at least one drive or delivery of all floatable logs to said second parties. And the said parties of the second part, for and in consideration of the aforesaid covenants on the part of the party of the first part, doth covenant and agree to and with said party of the first part to pay it the sum of \_\_\_\_ dollars per thousand feet for all their hemlock logs known as deadhead and sunken logs, and the sum of \_\_\_\_ dollars per thousand feet for all other logs. Payments to be made as follows: an advance of \_\_\_\_ per cent. of contract-prices to be paid on the \_\_\_\_ day of each month of all logs raised, banked and skidded during the preceding months, this amount to be considered as an advance under this contract and not as a payment on any particular lot of logs. On the \_\_\_\_ day of each month, payment to be made for all logs delivered to the respective mills of said parties of the second part during the preceding month, less any amount that may be due said second parties by reason of the advance money above mentioned.

It is further agreed by and between the parties hereto that the owners of logs raised and delivered in accordance with this contract shall furnish their respective stamps and bark marks for

the identification of their respective logs, and that the party of the second part shall stamp its own identification mark on the logs raised by it, the mark "Nav" being hereby adopted as said mark.

It is further agreed and mutually understood between the parties hereto that all unidentified and unmarked logs raised by said first party shall be stamped with — on both ends of logs, and bark-marked with — in middle of logs, and that every thirty days a complete list of the unknown and unidentified logs as above specified shall be rendered to the party of the second part, and every thirty days the party of the first part shall advertise and sell the same as provided by statute, said second parties paying all the cost and charges incident thereto, said first party to turn over to a representative hereafter designated by said second parties the amount or sum received for said logs thus sold, which sum or price shall not be less than the contract-price for raising the same, including the costs and charges for selling them. In the event of any of the parties of the second part to this contract purchasing or bidding in the logs advertised and sold as aforesaid, then said first party shall deliver all such logs to the said representative, or at such mill or mills as he shall designate; and said first party shall receive from said second parties the price therefor as heretofore set forth in this contract.

It is mutually understood and agreed that said second parties are to hold the party of the first part harmless, and indemnify it fully against all loss and damages of every name and nature for all logs sold by them as aforesaid.

It is further agreed by and between said parties hereto that all logs scaled under this contract shall be scaled by scalers mutually agreeable to the parties hereto; said scalers to make in all cases a fair and equitable scale, and according to "Doyle's rules," and all logs delivered to said second parties' mills are to be scaled by scalers employed by the — company, it being understood and agreed that in the absence of said company scalers, then the same are to be scaled by scalers mutually agreed upon by the parties hereto, all logs to be scaled at the mills without expense to said first party. The scalers employed to scale

the logs when taken out of the water, flats or bayous of said stream and its tributaries are to be paid one-half by each of the parties hereto, said first party to board said scalers without cost or charges to said second parties.

In witness whereof, etc.

1. *Manistee Nav. Co. v. Louis Sands Salt & Lumber Co.* (Mich.), 140 N. W. 565.

#### 5720. Contract for mechanic's work.

This agreement, made this — day of —, 19—, by and between — of the city of —, state of —, party of the first part, and — of the city of —, state of —, party of the second part, witnesseth:

That in consideration of the amount herein named, the party of the first part hereby agrees to perform for the second party the following work: —, and to become responsible for all materials delivered to and received by said first party, and commence the work on the — day of —, 19—, and to complete and deliver said structure to the party of the second part free from mechanics' liens or other liens on or before the — day of —, 19—.

The party of the second part agrees and covenants that in consideration of the faithful performance of said work by the first party to pay to the latter the sum of — dollars, as follows: —.

It is further mutually agreed by and between said parties, that in case of disagreement with reference to said work, all questions of disagreement shall be referred to —, — and —, and that an award by them or a majority of them shall be binding and final on the parties to this agreement.

In witness whereof, etc.

#### 5721. Contract to sell, cut and deliver wood.

This agreement, made this — day of —, 19—, by and between — of the town of —, state of —, and — of the city of —, state of —, witnesseth:

That — hereby sells and agrees to cut and deliver to —, at —, — cords of sound and seasoned oak wood, the same

to be — feet in length and of other usual dimensions, and deliver the same at said place on or before the — day of —, 19—, for which the said — agrees to pay — dollars per cord therefor, upon certificate of — that such number of cords of woods as described have been delivered as aforesaid.

In witness whereof, etc.

#### **5722. Contract with foreman.**

Memorandum of agreement made this — day of —, 19—, by and between — of city of —, state of —, and — of city of —, state of —, who are engaged in the business of —, witnesseth:

That said — does hereby employ and hire the said — as foreman of their — located at —, for the term of — years, if they — shall so long remain in business, and for said services — agree to pay — dollars per day to said —, the same to be paid as follows: —. All overtime to be paid for in accordance with the custom of the business.

Said foreman agrees, and it shall be his duty, to instruct in the business such employés as the said — may employ and put in charge of said foreman

If at the end of said term of said employment either party desires a change in their business relations, he or they shall give the other — months' notice thereof prior to the expiration of said term.

In testimony whereof, etc.

#### **5723. Agreement for service of farm laborer.**

Agreement made this — day of —, between — (farmer), the master, of the one part, and —, the servant, of the other part: It is agreed that the master will employ the servant, and the servant will serve the master, for one year from the — day of — as a general farm laborer. The master will pay the servant — dollars per week as wages. If the servant shall be absent from his work at any time without the master's consent, or shall misconduct himself, the master may forthwith determine the servant's employment, or in case the

servant shall leave the master's employment without consent, he shall not receive any further wages.

The master may determine the servant's employment upon giving him one week's notice, or paying him one week's wages in lieu of notice, in addition to his wages at the rate aforesaid for the time he has actually worked.

In witness, etc.

(Signature of both parties.)

**5724. Agreement between master and servant.**

Agreement made this — day of —, 19—, between — of — (the master), of the one part, and — of — (the servant), of the other part.

I, the undersigned, master, hereby agree to take the said servant into my service as coachman at the yearly wages of — dollars, payable monthly; and I, the said servant, declare that I understand and am competent properly to perform the duties of such a situation, and hereby agree to serve the said master honestly, soberly and faithfully, at all times and in all respects, during my service; and will conform to the hours and rules of his establishment, and conduct myself with decorum and respect toward him, his family and friends; and not absent myself from such service at any time without his leave. Such service may be determined at any time by either party on giving the other one month's written notice, or on payment by the said master of a month's wages in advance, except in case of unjustifiable misconduct, when the same shall be forfeited absolutely.

Dated this — day of —, 19—.

**5725. Agreement between employer and employe to do piecework.**

This agreement made this — day of —, 19—, between — of — (employer), of the one part, and — of — (employe), of the other part, witnesseth:

Said employer hires and employs the said employe in the said employer's business, in the town of —, in the capacity of a — making (or doing) —, and agrees to pay him during the term that he shall remain in such employment. — per piece, all upon the terms and conditions hereof.

Said employe agrees to and with said employer that he will

devote his entire time, skill, labor and attention to said employment, during the term for which he may be so employed, working as many hours per day as said employer may direct, that he will finish each piece of work in a careful and workmanlike manner, that he shall receive no pay for the same unless it is completed to the satisfaction of the employer's inspector or foreman, and that, when each piece of work is so finished to such inspector's or foreman's satisfaction he shall receive the wages aforesaid.

Said employer may at any time terminate said employment, at his election, upon payment to said employé of what may be due him, at the rate aforesaid, on the completion of his last piece of work, on the evening of the day of his actual discharge; that said employer shall be the sole judge of the cause for discharge, and that any agreement or arrangement whereby the said employé has been heretofore employed by said employer is hereby canceled, released and discharged at this date.

In witness, etc.

**5726. Agreement between merchant and traveling salesman.**

Agreement made this —— day of ——, between —— of ——, and —— of ——, merchants and copartners, doing business under the firm name and style of —— & Co., of the one part, and —— of ——, traveling salesman, of the other part.

The said salesman shall enter into said firm's service as a traveler for them in their business of —— merchants, for the period of —— years from the —— day of ——, 19——, subject to said firm's general control.

The said salesman shall devote the whole of his time, attention and energies to the performance of his duties as such salesman, and shall not, either directly or indirectly, alone or in partnership, be connected with or concerned in any other business or pursuit whatsoever during the said term of —— years.

The said salesman shall, subject to said firm's control, keep proper books of account, and make due and correct entries of the price of all goods sold, and of all transactions and dealings of and in relation to the said business, and shall serve the said firm diligently and according to his best abilities in all respects.



The fixed salary of the said salesman shall be the sum of — dollars per week for the first year, payable by the said firm weekly from the commencement of the said service, on the — day of —, and — dollars per week for the second year, and — dollars per week for the third year, payable weekly in like manner, from the commencement of such respective years.

The reasonable traveling expenses and hotel bills of the said salesman, incurred in connection with said firm's business, shall be paid by the said firm from week to week, in addition to the said fixed salary.

In witness, etc.

1. See Agency Contracts, ante, 5167.

**5727. Agreement with manufacturing company for the services of surgeon.**

This agreement made this — day of —, 19—, between — of — (surgeon), and — of — (the company), witnesseth:

Whereas said surgeon is a regularly licensed practitioner at —, in the county of —, and the said company is engaged in the manufacture of steel and iron at — in said county, employing on the average, throughout the year, about two thousand men, and desires to secure the services of a surgeon to administer to said men in case of accident or injury during employment, now, therefore, the said surgeon agrees promptly on call to administer and apply unto all and any of said men, injured or hurt while in said company's employ, all such medicines, physics and surgery as shall be necessary and proper, according to the best of his skill and knowledge, for a period of three years from date in consideration of the payment to him by said company of the sum of — dollars per year, payable quarterly. The said surgeon shall at all times provide drugs, medicines and instruments of surgery at his own cost and expense, and shall hold himself subject to the call of the company at any time.

Such service may be terminated at any time by either party on giving the other one month's written notice, except in the case

of unjustifiable misconduct or intoxication on the part of said surgeon, when the same shall be forfeited absolutely.

In witness, etc.

**5728. Agreement between shipowners for appointment of ship's husband.**

Agreement made this —— day of ——, 19——, between —— of ——, of the first part, —— of ——, of the second part, and —— of ——, of the third part. Whereas the said parties are co-owners of the ship ——, of the port of ——, and it has been agreed that —— shall be ship's husband for the said ship: Now this agreement witnesseth that each of said parties hereby agrees with the others as follows:

The ship's husband shall have the sole management of the said ship in all matters relating to her employment (subject to the conditions hereinafter mentioned), and shall have full power from time to time to engage such person as master as he may think proper, and such appointment at his absolute discretion to revoke.

The ship shall be employed in such lawful trade as the ship's husband may consider to be most beneficial.

The ship's husband shall insure the said ship and her freight for such sums as may from time to time be agreed on, in the name of the co-owners, or otherwise.

The ship's husband shall keep true accounts of all charter parties, freights, profits, disbursements and business of the ship, and of all moneys and remittances which shall grow due, or be paid or received, on account of the ship, in a book to be kept for that purpose, which shall be regularly posted up, and each of the said parties shall, at all reasonable times, have liberty to inspect and take copies from such accounts and the vouchers relating thereto.

The ship's husband shall receive for his services in managing the ship the annual sum of —— dollars (or a commission of —— per cent. on the gross earnings of the ship), which he is hereby authorized to charge against the ship.

An account of every voyage shall be written in a book, and shall be signed by each of the said parties or his agent, and, after being so signed, the book shall be left in the custody of the ship's

husband, and each of the said parties shall be bound by every such account, unless manifest error shall be found therein, and signified to the several parties within six months after the date of such account, in which case (but not otherwise) such error shall be rectified.

The ship's husband shall within thirty days next after the receipt of the freight, or the termination of every voyage, make out a particular account of all the profits of the ship, and the net balance shown by such account shall then be divided between the said parties according to their respective shares in the ship, but a sum of not exceeding — dollars shall be left in the hands of the ship's husband to meet the future working expenses of the ship.

In a case of a total loss of the ship, the ship's husband shall immediately upon the receipt of any money insured upon the ship or her freight, or otherwise, pay to each of the said parties his share of such insurance moneys, excepting a sufficient sum to meet future claims in respect of insurance premiums or other debts relating to the ship.

If the ship shall be unsuccessful on any voyage, or shall meet with such losses or damage that her gains are not equal to her losses on such voyage, then each of the said parties shall, within thirty days after settling and adjusting the accounts by which such losses shall appear, pay his proportionate part of such loss to the ship's husband.

In case any of the said parties shall wish to sell his share in the vessel, or any part thereof, the same shall be offered to the co-owners at a price to be named in writing by the said party who desires to sell his share, and such offer shall be sent by post to, or left at the residence of, each of the remaining owners; and such remaining owners, or any one or more of them, shall have the right to purchase such share at such price, upon signifying such intention within ten days after such notice shall have been received as aforesaid, and such notice and acceptance shall amount to an agreement for the sale and purchase of the said share; but in case none of the remaining owners accepts such offer within the said time, or if more than one of them offer to purchase the

ship, or if any one of them requires her to be sold by auction, then the entirety of the vessel shall be publicly advertised for sale by the ship's husband (notice of the time and place of sale being given by him to each of the co-owners), and shall be absolutely sold by public auction after the expiration of fourteen days from the time prescribed for accepting such offer.

In witness, etc.

1. See Charter Party, ante, 5564.

**5729. Agreement between garage keeper and owner of automobile.**

This agreement, made this — day of —, 19—, between — of — (garage keeper), and — of — (automobile owner), witnesseth:

Said garage keeper, in consideration of the payment of the stipulated sum of — dollars per month, due and payable on the — day of each month, hereby agrees with said automobile owner to store, keep and take care of his machine No. — at his garage at No. — street, in the city of —; to keep the same clean and in good condition, free from dirt and dust; to supply the same with all gasoline that may be necessary for it while in use, except in the event that said machine is taken on a trip exceeding — miles, in which case said expenses shall be borne by said automobile owner; to deliver said machine to said automobile owner at his place of residence or at such other place as said automobile owner may direct whenever said automobile owner may desire to use it; and to take said machine from said residence, or other place, back to said garage at such times as said automobile owner may call upon said garage keeper so to do.

Said garage keeper shall not make any repairs on said machine except after giving notice to said automobile owner and receiving orders from him to that effect, and for any and all repairs that may be so made said garage keeper shall charge such sums as may be necessary to make the repairs.

In witness, etc.

1. *Wilson v. Wyckoff*, 133 App. Div. (N. Y.) 92, 117 N. Y. S. 783, *affd.* 93 N. E. 1135; *Allen v. Fulton Motor Car Co.*, 128 N. Y. S. 419.

**5730. Agreement with garage keeper to take care of machine and make repairs.**

This agreement, made this — day of —, 19—, between — of — (garage keeper), and — of — (automobile owner), witnesseth:

In consideration of the payment of the stipulated sum of — dollars per month, due and payable on the — day of each month, said garage keeper hereby agrees with said automobile owner to store, keep and take care of his machine No. — at his garage at No. — street, in the city of —; to keep and maintain the same cleaned and in good condition, free from dirt and dust; to polish all brass parts whenever it may be necessary; to supply the same with gasoline which may be needed for its use, except when said automobile owner takes said machine on a trip exceeding — miles, in which case said automobile owner shall pay for all gasoline used on such trips beyond a filled tank at the starting of each trip; to deliver said machine to said automobile owner at his place of residence, or at such other place as said automobile owner may direct, whenever said automobile owner may desire to use it; and to call for and take said machine from said residence or other place back to said garage upon notification by said automobile owner to do so.

Said garage keeper shall make all repairs on said machine in consideration of the foregoing payments, as often as may be necessary; but said automobile owner shall carry an insurance policy covering the total destruction of said machine, or the break of any part thereof, in the sum of — dollars; and whenever any repairs may be necessary by reason of breakage or accidents, the money accruing from said insurance shall be paid to said garage keeper therefor, and shall be compensation in full for his services in making the required repairs.

In witness, etc.

**5731. Agreement between owner of automobile and chauffeur.**

This agreement, made this — day of —, 19—, between — of — (the automobile owner), and — of — (the chauffeur), witnesseth:

Said chauffeur hereby agrees to drive machine No. — of

said automobile owner for a period of —— months from date, in a careful and prudent manner; to keep said machine clean and in good condition; to make all necessary repairs when the same can be done outside of a garage or factory, and to always handle and operate said machine with caution and judgment. Said chauffeur shall be at the barn of said automobile owner by —— o'clock of every day, and remain until —— o'clock, and shall be ready at any and all times to drive said machine, upon call. He shall drive said machine at a reasonable rate of speed, and at no time shall he exceed the limits established by law, except under the positive direction of said automobile owner, or some member of his family, whose direction said automobile owner has ordered said chauffeur to follow.

In consideration of the foregoing, said automobile owner hereby agrees to pay said chauffeur the sum of —— dollars per month, due and payable on the —— day of each month; to provide him with two meals per day, and to furnish him lodging when the same may be made necessary by reason of extended trips, or driving late in the evening.

Said term of service may be terminated by said chauffeur upon giving two weeks' written notice, or by said automobile owner upon the payment in full of all wages that may be due up to and including the day of said termination, and the further sum of two weeks' wages.

In witness, etc.

### 5732. Contract with chauffeur—Another form.

This agreement, made this —— day of ——, 19——, between —— of ——, hereinafter called the automobile owner, and —— of ——, hereinafter called the chauffeur, witnesseth:

In consideration of the sum of —— dollars per month paid by said automobile owner to said chauffeur on the —— day of each and every month, the providing him with two meals per day, and the furnishing him with lodging, when the same may be necessary, by reason of extended trips or driving late at night, said chauffeur hereby agrees to drive the automobile of said owner for a period of —— months from date in a careful and

prudent manner; to keep said machines clean and in good condition; to make all necessary repairs when same can be done outside of a garage or a factory, and always to handle and operate said machines with caution and judgment. Said chauffeur shall be at the barn of said automobile owner by — o'clock of every day and shall be ready at any and all times to drive said machines, upon call; he shall drive at a low and reasonable rate of speed, and at no time shall he exceed the limits established by law, except under the positive direction of said automobile owner or some member of his family whose directions said automobile owner has ordered said chauffeur to follow.

The term of service herein fixed may be terminated by said chauffeur upon giving — weeks' notice in writing, or by said automobile owner upon the payment in full of all wages that may be due up to and including the day of said termination and the further sum of two weeks' wages.

In witness, etc.

## FRANCHISES.

### 5735. Street railway ordinance.

Section 1. Be it ordained by the mayor and common council of the city of —, in the county of —, and state of —, that —, its successors and assigns, is hereby empowered and duly authorized to locate, construct, maintain and operate upon, over, along and across — street, — street, — street and — street, and across each and all streets and alleys intersecting and crossing the above-named streets in said city, and further extensions after the completion thereof, a street railroad or railroads, single or double tracks, with necessary turnouts and turntables and with cars to be drawn or propelled by horse, mule, electric, cable or other motive power as is at present used or employed by street railroads. Said road shall be constructed and equipped in a substantial manner with first-class material and operated daily on schedule time, and the fare for each passage within the corporate limits of said city shall not exceed five cents.

Sec. 2. That the said —, its successors and assigns, shall construct and maintain said railroad or railroads, switches, sidings, turnouts and turntables upon, over, along and across said streets named in section 1 of this ordinance as not to unnecessarily interfere with the free use thereof, and that the portion between the tracks and on the outside thereof to the limit of two feet shall be kept in good repair and condition, considering the nature of the use as other parts of the said streets are kept by the said city.

Sec. 3. That this ordinance shall be in full force and shall take effect from and after its passage, provided always, that if said railroad or railroads be not completed within — days, from the taking effect of this ordinance, then this ordinance shall be void and of no effect.



Ordained by the common council of the city of —, state of —, this — day of —, 19—.

\_\_\_\_\_,  
Mayor.

\_\_\_\_\_,  
City Clerk.

1. Columbus St. R. & Light Co. v. Columbus (Ind.), 86 N. E. 83.

### 5736. Telephone ordinance.

Section 1. Be it ordained by the mayor and common council of the city of —, in the county of —, and state of —, that —, its successors and assigns are hereby empowered and duly authorized to erect and maintain upon the public streets and alleys and upon the public grounds of the said city, poles or posts of wood or other suitable material to support necessary telephone wires and other appliances necessary and convenient for the operation of a system of telephones for telephone exchange in said city, provided that the said — telephone company and its successors and assigns shall keep and maintain an office and operator on lines of telephone wires at some convenient point within said city and connected and used with the telephone system of said — telephone company; and provided that posts shall be so placed, and the wires upon them be kept at such elevation, and so attached and secured and at such elevation as to avoid danger to persons and adjacent property and the use of such streets and alleys for other local purposes, and such posts, in the business and densely built portions of said city, to be kept properly painted by said — telephone company: and provided further, that the points for the location of said poles shall be designated by the city council of said city, through its committee on streets and alleys.

Sec. 2. Said poles shall not be set so as to interfere with the construction or placing of any water pipes, gas pipes, drains or sewers, or the flow of water therein, that has been or may be placed by authority of said city, and in case of bringing to grade or change of grade on any street or alley whereon such posts may have been erected and placed, then said — telephone com-

pany, its successors and assigns shall change such posts and reset the same under the direction of the street and alley committee of the city council of said city.

Sec. 3. Said city shall, at all times during the existence of the privilege hereby granted, have free use of the said posts or poles upon which to place the wires for its fire alarm connections, and any and all telephone instruments which may be at any time connected with said telephone exchange may be used by the public for the purpose of giving alarms of fire, without any charge or toll therefor by the said telephone company.

Sec. 4. Said city shall, at all times during the existence of the privilege hereby granted, have from said company, its successors and assigns the use, free of charge, of — telephones connected with the telephone system of said city, to be placed at such points within the city limits, not more than three-quarters of a mile from the telephone exchange, as the city council may designate, and to be kept and maintained in good repair and working condition by said telephone company, its successors or assigns.

Ordained by the common council of the city of —, state of —, this — day of —, 19—.

\_\_\_\_\_,  
Mayor.

\_\_\_\_\_,  
City Clerk.

1. *People v. Central Union Tel. Co. (Ill.)*, 83 N. E. 829.

### 5737. Water-works franchise.

Section 1. Be it ordained by the mayor and common council of the city of —, in the county of —, and state of —, that — water-works company, its successors and assigns are authorized and empowered to use the streets, alleys and public grounds of said city to lay pipes and mains for the conveyance of water in and through said city for the use of the city and its inhabitants.

Sec. 2. That said — water-works company, its successors or assigns shall have the exclusive privilege of laying down pipes for conveying water in said city for the use of said city and inhabitants for the term of — years from the date of the

passage of this ordinance; provided that the said water-works company, its successors or assigns shall, within — days from the approval of this franchise, establish the best and most suitable place within the western portion of this city for the source of water supply, and submit this selection to the mayor and city council for their approval and have the said works completed and in successful operation within — months of such approval, and shall keep and maintain such system of water-works with all future additions and extensions in successful operation thereafter during the term of franchise, unavoidable accidents or delays consistent with ordinary precaution only excepted.

Sec. 3. That said — water-works company, its successors or assigns shall erect within the corporate limits of the city of —, —, a complete system of water-works of sufficient capacity to furnish at all times all the water necessary for use in said city for the prompt extinguishment of fires and for sprinkling and other public and domestic purposes, and shall at all times make all additions and extensions necessitated by the increased demand.

Sec. 4. That said water-works company, its successors or assigns shall at the most suitable place erect the necessary buildings and appliances for such system of water-works, and shall erect and put up a stand pipe of the dimensions of — feet in diameter and — feet high; there shall be — duplex pumps of the most approved patterns capable of furnishing — gallons of water per day of twenty-four hours, also — boilers of best construction and so arranged and built that they may be fired and used separately or together and each of sufficient power to run — pumps at the same time with each firing, and provide everything found indispensable and desirable for a complete and successful plant of water supply.

Sec. 5. Starting from these works the — water-works company, its successors or assigns shall lay down and maintain standard iron mains of at least — miles in length, said pipes to be of such dimensions as hereinafter set forth, and sufficient to secure at all times and at any and all places within said — miles of sufficient water supply, as well for public as domestic use, and the said — water-works company, its successors or

assigns shall erect without cost to the city, —— double discharge fire hydrants or any number above said amount as may be ordered by the city at such points and places as the proper authorities of the said city may designate, and shall connect such fire hydrants with the system of mains, provided that whenever the additional hydrants so ordered shall necessitate an extension of the mains beyond the —— miles, the number of hydrants so ordered or the private consumption to be secured, or both of them, are sufficient to justify the additional outlay.

Sec. 6. That the size of the mains shall be as follows: Starting out from the works there shall be not less than —— inch pipe extending to —— street, there shall be —— feet of —— inch pipe laid in —— street and connecting with the —— inch main; there shall be —— feet of —— inch main, laid as the city council may direct; the balance of the —— miles and any further extensions to be of any size not less than —— inches in diameter laid as the city may direct; all pipes to be of the dimensions stated interior measure, and all mains to be of standard cast iron and no mains to be laid at any time less than —— inches interior diameter; the stand pipe to be of boiler iron and to be placed on a solid foundation of masonry laid in cement.

Sec. 7. That the said water-works company, its successors or assigns shall at the request of any citizen, without unnecessary delay, put down the necessary pipes, and connect them with their system of mains to supply the property of said citizens with water for all domestic purposes under such conditions and at such annual rents as shall be agreed upon between the city council and the said water-works company before the expiration of the —— days granted above for the establishing of water source, but the said water-works company, its successors or assigns may make with large consumers, such as railroads, hotels, mills, breweries, factories and others, special rates as they may deem proper, the cost of the connections to be borne by the respective citizens.

Sec. 8. The said water-works company shall repair damages to the streets caused by laying or operating its mains.

Sec. 9. The city of ——, by its mayor and city council for and in consideration of the obligations imposed on the ——

water-works company, its successors or assigns, by the foregoing sections, hereby agree to, and contract with the — water-works company, its successors or assigns, to accept the — hydrants in section 5 of this ordinance for the use of the city of — as soon as the same are erected, connected with the water mains and supplied with water, and from that day to pay the — water-works company, its successors or assigns, the sum of — dollars United States currency per annum for each and every such fire hydrant above enumerated as well as for every additional hydrant in excess of said number during the term of this contract; provided, however, that the mayor and the city council of the city of — shall not be bound to accept such — hydrants for the use of the city before a thorough test is made to prove that the works erected by the — water-works company, its successors or assigns, under this ordinance, are in perfect working order and are able to throw simultaneously — streams of water from any — hydrants to be designated by the mayor and city council through — feet of two and one-half inch rubber hose and one inch ring nozzle at least — feet high from stand pipe alone and — feet high by direct pressure of pumps.

Sec. 10. That the — water-works company shall execute a good and sufficient bond in the penal sum of — dollars conditioned for the faithful completion of works as specified in section 2, said bond to be subject to the approval of the mayor and to be void after the acceptance of the works as set forth in section 9.

Sec. 11. This ordinance shall take effect and be in force from and after its publication once in the —, and its acceptance in writing by the said water-works company, its successors or assigns.

Ordained by the common council of the city of —, state of —, this — day of —, 19—. \_\_\_\_\_,

Mayor.

\_\_\_\_\_,  
Clerk.

### HUSBAND AND WIFE.

See ANTENUPTIAL AND POSTNUPTIAL CONTRACTS, ante, 5175-5181.

30—CONTRACTS, VOL. 6.

**INDEMNITY AND GUARANTY CONTRACTS.****5740. Letter of guaranty for goods sold to third person.**

To Messrs. — & Co., of —, and the persons who now or may from time to time constitute said firm:

I hereby guarantee payment to you for all goods which you may supply to — of —. And I declare that this guaranty shall continue to be binding notwithstanding any change in your firm. Dated this — day of —, 19—.

1. See ante, vol. 5, chaps. 114, 115, 116.

**5741. Guaranty for goods supplied to third person.**

Agreement made this — day of —, 19—, between — of —, merchant, and — of —, tradesman, and — of —, guarantor.

Whereas the said merchant has, at the request of the said tradesman, agreed to supply him from time to time in the course of his said trade with goods on credit, not at any time to exceed altogether in value, at trade prices, the sum of — dollars, which he, the said merchant, has consented to do, on having the agreement hereinafter contained:

Now these presents witness that said merchant, in consideration of the agreement on the part of both said tradesman and said guarantor hereinafter expressed, hereby agrees to supply the said tradesman from time to time, upon the usual terms of credit in his trade, with goods for the purpose of being used therein; but the whole so supplied shall not, at any time, exceed in value, at trade prices, the sum of — dollars.

The said tradesman hereby agrees duly to pay the said merchant for the articles so to be from time to time supplied to him as aforesaid, when and as the same shall respectively become due, according to the usages of his said trade.

The said guarantor, in consideration of said agreement of said merchant, hereby agrees that he will pay the said merchant all sums of money as shall from time to time, or at any time hereafter, during the continuance hereof, become due to him from

the said tradesman for articles to be so supplied as aforesaid, but not exceeding in the whole, for the time being, the sum of — dollars.

The guaranty hereby given shall be deemed a continuing guaranty, but the said guarantor shall not at any time be responsible for, or liable to pay to the said merchant, more than the balance which may, for the time being, be due to him from the said tradesman, not exceeding in the whole the sum of — dollars; and that no proceedings whatever shall be taken against the said guarantor for the recovery of such floating sum, or any part thereof, until the expiration of — days' notice, which shall be given in writing to him or them of default having been made by the said tradesman in payment thereof, or some part thereof, and requiring the said guarantor to pay the same;

And also that, in the event of the said tradesman refusing or neglecting to pay any such sum of money as may for the time being be due from him for articles to be so supplied as aforesaid; or of his becoming bankrupt or filing any petition under the bankrupt laws; or of his compounding or attempting to compromise with his creditors, said merchant shall resort to and recover from him, the said tradesman, or his estate, so much of the said debt or sum then due as can be obtained or recovered, before requiring payment thereof, or any part thereof, from the said guarantor.

And also that the guaranty hereby given may be determined by the said guarantor at any time, on payment of the amount then due to the merchant either by the said tradesman or by the said guarantor.

In witness, etc.

**5742. Guaranty for goods supplied limited to one transaction.**

To — & Co., of —:

In consideration of your supplying to — of — goods in the way of his trade and business as a — up to but not exceeding — dollars, I hereby guarantee to you the payment of said sum. This guaranty is not a continuing security and shall not extend or apply to any goods that shall be supplied by you whether at one time or otherwise to the said — in excess of

the said sum of — dollars, and all payments made by the said — to you after the date hereof on account of goods supplied to him by you as aforesaid shall be appropriated by you in reduction of my liability under this guaranty until the said sum of — dollars shall have been wholly paid and satisfied by the said — and my liability thereunder shall have been thereby or in some other way discharged. Dated this — day of —.

\_\_\_\_\_,  
(Signature of Surety.)

**5743. Guaranty of payment of debt by instalments, in consideration of staying suit.**

To — of —:

In consideration of your staying proceedings in the action you have commenced against —, in the — court for the state of —, to recover the sum of — dollars, I hereby guarantee to pay you that amount by weekly instalments of — dollars, and in default of payment of any one instalment, I further agree that the balance then due of the said sum of — dollars shall be recoverable against me upon this guaranty. Dated this — day of —, 19—.

**5744. Guaranty by holder of bill of lading to master against other claims to same goods.**

Agreement made this — day of —, 19—, between —, and —, of —, copartners under the firm of — & Co., of the first part; —, captain of the ship —, of —, of the second part; and —, of —, as guarantor, of the third part. Whereas, the said firm are the holders of bills of lading which have been indorsed to them, representing certain goods forming a portion of the cargo of the said vessel on her voyage which has just been completed; and whereas the said captain, having reason to believe that claims will be made on him by other persons in respect of the said goods, has refused to deliver the said goods, and the said firm and said party of the third part as guarantor have agreed to give the said captain the guaranty hereinafter contained, on his agreeing to deliver the goods to the said firm;



Now this agreement witnesseth, that the said captain hereby agrees to deliver to the said firm the goods named herein, and in consideration of the premises the said firm and said guarantor hereby jointly and severally agree with the said captain, and also as a separate agreement with the owners of said ship, that they or one of them, or the executors or administrators of them or one of them, will hold the said captain and owners respectively harmless and indemnified against all claims which may be made in respect of the said goods by any other person or persons, and will pay to the said captain, or owners, all damages, losses, costs and expenses which they, or any or either of them may suffer or pay in consequence of the said goods having been delivered to the said firm.

In witness, etc.

**5745. Guaranty of bond by indorsement.**

For value received, the —— railroad company hereby guarantees to the holder hereof payment of interest on the within bond of the —— steamship company, and also the payment of the principal thereof when the same becomes due and payable according to the tenor thereof.

In witness whereof the —— railroad company has caused these presents to be subscribed by its president, and its corporate seal to be affixed and attested by its secretary, by express authority of its board of directors, this —— day of ——, 19—.

**5746. Guaranty of rent to be indorsed on lease.**

In consideration of the making of the within-written lease, I do hereby covenant and agree with the within-named lessor, his heirs, executors, administrators and assigns, that if default shall at any time be made by the said lessee, his executors, administrators and assigns, in the payment of the rent or the performance of the covenants therein contained, on his and their part to be paid and performed, I will well and truly pay the said rent, or any arrears thereof that may remain due, and also all damages that may arise in consequence of the nonperformance of said covenants, or either of them, without requiring notice of any

such default from the said lessor or other person having his estate in said premises.

Witness my hand and seal this — day of —, 19—.

**5747. Guaranty of rent to be indorsed on lease—Short form.**

I hereby bind myself as security for the fulfilment on the part of the lessee of all the obligations and covenants entered into by him as above.

Witness my hand and seal this — day of —, 19—.

**5748. Guaranty of rent indorsed on lease with right of substitution in favor of guarantors.**

We hereby jointly and severally, in consideration of the making of the within-written lease, guarantee the prompt payment of the rent reserved and the performance of the other obligations assumed and covenants made therein by the lessee. In witness, etc. (guarantors).

We, the within-named lessor and lessee, for ourselves, our heirs, executors, administrators and assigns, respectively agree with the above-named guarantors and with each of them, that if the lessee named in the within-written lease, his executors, administrators or assigns, shall fail to pay the rent reserved in said lease, or to perform the other obligations therein assumed by him, and the guarantors above named, being liable, shall actually pay said rent and faithfully perform all of said obligations, then they shall become subrogated to all the rights of the lessee in said lease, notwithstanding any breach or failure on the part of said lessee then existing, and the said guarantors shall have — days from each rent day respectively within which time to pay any rent then due and payable, and which said lessee shall have failed to pay. And in any event they shall have — days from the time the lessors notify them of any breach or failure on the part of said lessee in which to repair said breach or failure before said breach or failure shall work a forfeiture of their rights hereunder.

In witness, etc. (Lessor and Lessee.)

**5749. Guaranty to bankers—Short form.**

To Messrs. — & Co., Bankers at —:

Gentlemen—In consideration of your consenting at my request to continue a banking account now kept by you with the firm of — & Co., and to make advances from time to time thereon, I, the undersigned, hereby guarantee the payment of the current balance for the time being due from the said firm to you, or to you and your future partner or partners, on the balance of accounts for or on account or in consequence of any notes, bills, loans, payments, discounts or other banking transactions made, entered into or carried on by your firm to or for the use or on the account of the firm of — & Co., or for interest, commission or any other usual charges, or in consequence of any dealings or transactions whatsoever between your firm and the firm of — & Co., or on its account: Provided, that the whole amount of money to be ultimately recoverable by virtue of this agreement shall not exceed — dollars. And for the consideration aforesaid, I further agree that this document shall operate as a continuing guaranty, and that no advance or advances you may from time to time make to the firm of — & Co. beyond the extent before mentioned, nor the possession of any guaranty from any other person or persons, nor of any other security or securities, nor any change whatsoever in the firm of — & Co., or in the firm or partnership arrangements of your house, whether arising from death or otherwise, shall in any way determine or prejudice my liability under this agreement.

In witness, etc.

**5750. Guaranty by consignee of payment of lien for freight.**

Agreement made this — day of —, 19—, between —, master, on behalf of the owners of the ship —, of the first part; —, the consignee of certain goods now on board of the said ship, of the second part; and —, surety, of the third part. Whereas certain goods on board of the said ship, and in the possession of said master, are subject to a lien for freight, demurrage and other charges according to the charter party for the voyage just completed; and whereas the said consignee has re-

quested the said master to deliver the said goods to him before payment of the said lien, and the said master has agreed to do so upon the said consignee and the said surety entering into the agreement herein contained:

Now this agreement witnesseth, that the said master hereby agrees to allow the said consignee to receive from the said ship the said goods, and in consideration thereof the said consignee and the said surety hereby, jointly and severally, agree with the said master, and also (as a separate agreement) with the owners of the said ship, that they, or one of them, or the executors or administrators of them, or one of them, will pay to the said master or the owners of the said ship the amount of freight, demurrage (if any) and all other charges which the said master or the owners are entitled to receive in respect of the said goods.

In witness, etc.

**5751. Agreement to indemnify corporation on issue of new certificate of shares in place of one lost or destroyed.**

Whereas, the — company delivered to — a certificate of — shares of stock in said company, of which shares he is the owner, and the said — now declares that the said certificate has been mislaid, lost or destroyed, and has applied to the said company to give him another certificate, which the said company has consented to do upon receiving the indemnity hereinafter contained in which —, as surety, has agreed to join:

Now, therefore, the said — (shareholder), and — (surety), do hereby jointly and severally agree to save harmless and indemnify the said company from and against all claims and demands in respect of the said original certificate; and from and against all damages, losses, costs, charges and expenses which said company may sustain, incur or be liable for, or in consequence of any such claims or demands, or of its having given to said shareholder a second certificate as aforesaid.

In witness, etc. (Signatures of shareholder and surety.)

**5752. Indemnity by surety to corporation on issuing second certificate.**

Whereas, a certificate of — shares of the — company

made to —— of —— has been mislaid, lost or destroyed. Now I, the undersigned (surety), in consideration of the execution by said company of a new certificate of the same shares in favor of the said shareholder do hereby agree to save harmless and keep indemnified the said company from and against all claims and demands in respect of said original certificate, and from and against all losses, damages, costs, charges and expenses which said company may sustain, incur or be liable to, for or in consequence of its having executed a second certificate for said shares as aforesaid.

Dated this —— day of ——.

\_\_\_\_\_,  
(Signature of surety.)

**5754. Revocation by surety or guarantor when power is reserved.**

Whereas, by a written agreement dated the —— day of —— I became surety (or guarantor) to you for —— of ——, etc. I now, in pursuance of a power for that purpose reserved and contained in said agreement, give you notice that I hereby revoke and determine the said agreement from the —— day of —— next ensuing; and that my liability thereunder shall from and after the said last-mentioned date wholly cease and be determined.

Dated the —— day of ——, 19—.

\_\_\_\_\_,  
(Signature of surety.)

To —— (the person to whom the guaranty was given).

1. See ante, vol. 5, § 3958.

**5755. Revocation by surety where no power of revocation is reserved.**

Take notice that I, the undersigned, surety in an agreement (or bond), dated the —— day of ——, for the fidelity of —— in his employment by you on my recommendation, hereby declare that all liability whatever on my part under said agreement (or bond) shall wholly cease and determine from this date.

Dated the —— day of ——.

To —— of ——.

(Signature of surety.)

1. See ante, vol. 5, § 3958.

**5756. Notice to surety of default under agreement of guaranty.**

Take notice that — of — for whom you became surety under an agreement of guaranty dated the — day of — has made default in payment of the sum of — dollars due us in respect of goods sold to him and secured by said agreement; and we hereby call upon you to pay or cause to be paid to us the sum of — dollars within — days from the date hereof, otherwise proceedings to enforce payment will be taken against you.

Dated the — day of —, 19—.

\_\_\_\_\_,  
(Signature of creditor.)

To — of — (surety).

1. See ante, vol. 5, § 3977.

**5757. Guaranty of note on separate paper.**

For value received I hereby guarantee the payment, when the same shall become due, of a promissory note executed by — to —, for the sum of — dollars, payable — months after date, with interest at — per cent. from the date of said note.

Witness my signature this — day of —, 19—.

\_\_\_\_\_.

1. See ante, vol. 4, § 3394.

**5758. Guaranty by owner of advances to contractor.**

To — of the city of —, state of —.

In consideration of your advancing to — of city of —, state of —, the sum of — dollars, who is under contract with him for the construction of —, said contract bearing date of — day of —, 19—, I hereby guarantee the payment by him to you of said sum of money with — per cent. interest on the completion of —, in accordance with said contract between him and said contractor, such completion to be evidenced by a certificate of the architect superintending the construction of the said work.

In witness whereof, etc.

**. 5759. Guaranty contract—Fidelity of employe.**

This agreement made and entered into this — day of —,

19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That in consideration of first party having at second party's request agreed to engage — as clerk in the trade or business of — now carried on by first party at —, the said second party hereby undertakes to guarantee and indemnify first party to the extent of — dollars, but no further, against all loss or damage first party may directly or indirectly sustain or incur through the misconduct, negligence or disobedience of said —, clerk as aforesaid, whilst acting and continuing to be employed by first party in said capacity. This guaranty is to be within the limits aforesaid a continuing guaranty and to remain in force for a period of — years should said clerk continue without intermission so long in said first party's service and employment but not otherwise, notwithstanding any change or changes that may from time to time take place in the constitution of the firm entitling the second party, but for this provision, to revoke this guaranty.

In witness whereof, the parties have hereunto set their hands and seals this day and year above written.

1. See ante, 5514.

#### **5760. Guaranty of fidelity of clerk, agent or manager.**

In consideration of your having at my request agreed to engage — of — as your chief clerk in the trade or business of — now carried on by you at —, I hereby undertake to guarantee and indemnify you to the extent of — dollars, but no further, against all loss or damage you may directly or indirectly sustain or incur through the misconduct, negligence or disobedience of the said — whilst acting and continuing to be employed by you in said capacity. This guaranty is to be within the limits aforesaid a continuing guaranty and to remain in force for a period of — years should the said — continue without intermission so long in your service and employment, but not otherwise, notwithstanding any change or changes that may from time

to time take place in the constitution of your firm entitling me but for this provision to revoke this guaranty.

Dated the —— day of ——.

To —— & Company.

\_\_\_\_\_,  
(Signature of surety.)

1. See ante, 5514.



### INSURANCE CONTRACTS.

#### 5765. Standard form of fire insurance policy for New York state.

The — insurance company, in consideration of the stipulations herein named and of — dollars premium, does insure — for the term of — from the — day of —, 19—, at noon, to the — day of —, 19—, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding — dollars, to the following described property while located and contained as described herein, and not elsewhere, to wit: (description of property insured, and special clauses).

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment, estimate and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or

if the interest of the insured in the property be not truly stated herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within-described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building on ground not owned by the insured in fee simple; or if the subject of insurance be personal property and be or become encumbered by a chattel mortgage; or if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard), whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) for use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used or allowed on the above-described premises, benzine, benzole, dynamite, ether, fireworks, gasoline, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitroglycerin or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights and kept for sale according

to law, but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

This company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority, or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire, or when the property is endangered by fire in neighboring premises; or (unless fire ensues, and, in that event, for the damage by fire only) by explosion of any kind, or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manuscripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools or property held on storage or for repairs, nor beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan or description of property be referred to in this policy, it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance, no person, unless duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be canceled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be canceled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is canceled by this company by giving notice it shall retain only the pro rata premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached or appended hereto.

If property covered by this policy is so endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of the property remaining in the original location, shall, for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not, in any case of removal, whether to one or more locations, be liable beyond the proportion that the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover the property at the new location or not.

If fire occur the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged

personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all encumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession or exposures of said property since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish, if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged, and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent

and disinterested umpire; the appraisers together shall then estimate and appraise the loss; stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them, and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any examination herein provided for, and the loss shall not become payable until sixty days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property, or for loss by and expense of removal from premises endangered by fire, than the amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal, this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity, until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured; and

wherever the word "loss" occurs, it shall be deemed the equivalent of "loss of damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached or appended hereto.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements or conditions as may be indorsed hereon or added hereto, and no officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

In witness whereof, this company has executed and attested these presents, but this policy shall not be valid unless countersigned by the duly authorized agent of the company at —, this — day of —, 19—.

1. Also adopted by law in Connecticut, Louisiana, New Jersey, North Carolina, North Dakota, Oregon, Rhode Island and West Virginia, and used generally in all other states except those having their own statutory forms, viz.: Maine, Massachusetts, Michigan, Iowa, Minnesota, New Hampshire, South Dakota and Wisconsin.

2. For conditions subsequent, see ante, vol. 5, ch. 127.

3. For termination of contract, see ante, vol. 5, §§ 4291-4294.

4. For conditions precedent, see ante, vol. 5, §§ 4304, 4318.

5. See Actions, ante, vol. 5, § 4328.

6. See Arbitration and Award, ante, 5245, and Assignments, ante, 5317.

7. See ante, vol. 5, chaps. 120, 121, and §§ 4277, 4300, 4301, 4340.

### 5766. Standard tornado policy.

No. —

The — Insurance Company of —.

Amount, \$ — Rate — Premium, \$ —

In consideration of the stipulations herein named and of —

dollars premium does insure — for the term of — from the — day of —, 19— at noon (standard time) to the — day of — 19— at noon (standard time) against all direct loss or damage by tornado, wind storm or cyclone, except as hereinafter provided, to an amount not exceeding — dollars, to the following described property while located and contained as described herein and not elsewhere, to wit:

This policy is made and accepted subject to the following stipulations and conditions which are hereby specially referred to and made a part of this policy:

In the event of loss this company shall not be liable under this policy beyond the sum or sums hereby insured, nor the cash value of the property at the time of the loss, nor (except as otherwise provided herein) the ownership interest of the assured therein. Said loss to be ascertained as hereinafter provided, and in no case to exceed what it would then cost to repair or replace the property damaged or destroyed with material of like kind and quality, with proper deduction for depreciation however caused. Any loss for which this company shall be liable hereunder, shall be payable only after a full compliance with the terms, stipulations and requirements printed herein (or on the back hereof) which are made a part of this policy contract. This company reserves the right, if it so elect, to take all or any part of the articles damaged at their ascertained or appraised value; also, to repair, rebuild or replace any property damaged or destroyed; but there can be no abandonment to this company of the property herein described or any part thereof.

In case of any fraud, false swearing, misrepresentation or concealment by the insured touching any matter relating to this insurance or the subject thereof; or if any change, other than by the death of an insured, take place in the interest or title of the subject of this insurance; or if this policy be assigned without written consent of this company indorsed hereon, then, in each and every one of the above cases this entire policy shall be void.

This company shall not be liable for any loss or damage caused by hail, whether driven by wind or not, snowstorms, frost or cold weather, nor for the blowing down of metal smokestacks (unless specifically insured), awnings, signs, temporary or board roof additions, nor for loss or damage to buildings (or their contents) in process of construction or reconstruction, unless same are entirely enclosed and under roof, with all outside doors and windows permanently in place; nor for loss or damage occasioned directly or indirectly by or through any fire, explosion, tidal wave, lightning, high water, overflow, cloudburst; nor by theft, nor by reason of any ordinance or law regulating the construction or repair of buildings, nor for the consequential loss of any kind.

This company shall not be liable for any loss or damage caused by water or rain, whether driven by wind or not, unless the building insured or containing the property insured shall first sustain an actual damage to the roof



or walls of same by the direct force of the wind, and shall then be liable only for such damage to the interior of the building or the insured property therein as may be caused by water or rain entering the building through openings in the roof or walls made by the direct action of the wind.

This company shall not be liable for loss or damage to accounts, bills, money, deeds, evidences of debt, securities, bullion, manuscripts, nor, unless expressly assumed by agreement indorsed hereon, for casts, curiosities, drawings, medals, models, jewelry, patterns, pictures, scientific apparatus, sculpture, store or office fixtures.

If there shall be any other tornado insurance or contract of tornado insurance, whether valid or not, on the property described herein, claim upon this company shall be only for such proportion of the loss as the amount of this policy shall bear to the whole insurance.

It is expressly stipulated that only such proportion of the insurance under this policy on any building covers on plate, stained, leaded or cathedral glass therein, as the value of such glass shall bear to the value of said building; and to such extent only shall this company contribute with other insurance in payment of any loss thereon; and plate glass, accident or casualty insurance shall be deemed other insurance and treated as contributing.

In case of fire occurring subsequent to any loss or damage by tornado, windstorm or cyclone, this company shall be liable under this policy only for such loss or damage as occurred previous to said loss or damage by fire and for no loss by fire whatever.

This company reserves the right to cancel this policy or any part thereof at any time by giving notice to the insured (or any one of them), and if the premium has been fully paid, refunding the pro rata unearned portion thereof. Protection however, under this policy, if in full force and effect, and the premium has been paid, shall continue five days from the receipt of such notice. This policy may also be canceled on request of the insured, in which event the company shall be entitled to the customary short rate premium for the time expired.

In the event of loss the insured shall forthwith protect the property from further damage, separate the damaged and the undamaged personal property and make a complete inventory of same, stating the quantity and cost of each article and the amount claimed thereon and shall within fifteen days give notice of such loss in writing to this company, and within sixty days after the date of the tornado, windstorm or cyclone, render a statement to this company, signed and sworn to by the insured, stating the interest of the insured and all others in the property; the cash value of each item thereof and the amount of loss thereon; all other insurance whether valid or not covering any part of said property; and shall furnish an itemized statement of loss on and damage to (and if required plans and specifications of) any building, fixtures or machinery herein described.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company and subscribe the same; and, as often as required, shall produce for examination all documents, books of account, bills, invoices and other vouchers, or certified copies thereof, if originals be lost, at such reasonable place as may be

designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of any loss or damage, the same shall, at the written request of either party, be ascertained by two competent and disinterested appraisers, whose appointment shall, if requested, be agreed to in writing, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage and failing to agree, shall submit each subject of difference to the umpire; and the award in writing, under oath, of any two of them shall determine the amount of such loss, but such appraisal shall affect no other question under this policy; and until such appraisal, if requested, shall be had, the loss shall not be payable. The parties thereto shall pay the appraisers respectively selected by them, and shall bear equally the expenses of the appraisal and umpire. All claims for any loss or damage shall be forfeited by failure to furnish proofs of such loss or damage within the time and in the manner above provided, including examinations under oath and the award of appraisers, if the same or either of them have been requested. No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months after the date of the tornado, windstorm or cyclone.

No officer, agent or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto, and as to such provisions and conditions no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto.

In witness whereof, the Home Insurance Company, New York, have caused these presents to be signed by their president, and attested by their secretary, in the city of New York. But this policy shall not be valid unless countersigned by the duly authorized agent of said company at Indianapolis, Ind.

_____, Secretary.	_____, President.
Countersigned at _____, this _____ day of _____, 19____.	
Per _____, Agent.	

### 5767. Plate glass insurance policy.

No. \_\_\_\_\_.

The \_\_\_\_\_ Casualty Company of \_\_\_\_\_.

In consideration of \_\_\_\_\_ dollars premium, does insure \_\_\_\_\_

(hereinafter called the assured) against loss, by breakage, from accidental causes beyond the assured's control, of the glass in the premises No. ——— street, in the town or city of ——— and state of ——— and occupied as ——— and described in the schedule herein contained, for the term beginning at noon, standard time, on the ——— day of ———, 19—, and ending on the ——— day of ———, 19—.

This policy is issued and accepted, subject to the following conditions:

1. That in event of breakage, notice thereof must be given to the company immediately, with particulars and a statement of the cause so far as the same can be determined; and it shall be the duty of the assured to make all reasonable efforts to prevent further breakage, and to allow employes of the company to take all necessary measures to preserve the glass from further loss or damage. Whenever necessary, the assured shall, at his own expense, remove and replace any frames, fixtures, woodwork, gas fixtures or other obstructions to the replacing of the glass.

2. That the liability of the company under this policy is limited to the value of the glass at the time of breakage, provided the company shall be at liberty to pay the actual value of the glass broken or to replace the same as it shall elect; and in case it shall elect to replace the glass, it shall replace the same without unnecessary delay after satisfactory proof of said loss has been made by the assured. In either case the broken glass belongs to the company.

3. In the event of any loss or damage to any lettering or to any leaded or cathedral glass described in the schedule of this policy, the company may replace the same or pay to the assured the value of such lettering or such leaded or cathedral glass, as it may elect. In no event, however, shall the company be liable for a greater amount than that specified in the schedule as the value of such lettering or such leaded or cathedral glass.

4. This insurance does not include and the company shall not be liable for—

- (a) Any loss or damage resulting directly or indirectly from fire, whether on the premises described in the schedule or elsewhere.
- (b) Any loss or damage resulting directly or indirectly from invasion, earthquake, inundation or flood, insurrection, riot or any military or usurped power.
- (c) Any loss or damage resulting directly or indirectly from the blowing up of buildings when authorized by civil authorities.
- (d) Any loss or damage caused by or resulting wholly or partly from the making of any additions, alterations or repairs in or to the building containing the glass.
- (e) Any loss or damage caused by the glazing of any light of glass or by the removal of any light of glass from its frame or caused by the repairing of any frame.

- (f) Any loss or damage occurring before the glass is set in a workmanlike manner.
- (g) Any loss or damage to the frames or sashes.
- (h) Any loss caused by the scratching or defacing of any glass.
- (i) Any loss of or damage to any ornamentation, such as silvering, staining, painting, carving, cutting, lettering, embossing or other fancy work on any glass unless such ornamentation is specifically described in the schedule, and unless the loss of or damage to such ornamentation is the result of the breakage of the glass on which it appears.

5. If the assured carry other insurance against loss for which indemnity is provided hereunder, the company shall be liable only for its pro rata share of such loss.

6. That the company, upon making any payment in indemnification of damage or loss covered by this policy, shall be subrogated to all rights of the assured for such damage or loss, and the assured shall execute and deliver to the company any instrument of writing that may be required to confirm and secure such subrogation.

7. That this policy may be cancelled at any time by the assured, in which case the company may collect or retain the earned premium calculated on the basis of the short rate table set forth hereon. This policy may be canceled by the company on giving five days' notice in writing to the assured and tendering the pro rata return premium, and the company's check mailed to the address of the assured as given in this policy shall be a sufficient tender.

8. That no assignment of this policy shall be valid, unless the consent of the company shall be endorsed hereon by an officer or authorized agent of the company.

9. If any portion of the glass hereby insured shall be broken and the company replace or pay for the same, the insurance hereunder shall apply to the new plate or plates. If, however, all of the glass hereby insured shall be broken and replaced or payment therefor be made, this insurance shall not apply on the new plate or plates but shall terminate.

10. That no condition or provision of this policy shall be waived or altered save in writing by an executive officer of the company, and no notice given to or possessed by any agent or other person shall be held to effect a waiver or change in this contract.

11. That no suit or action of any kind against the company for the recovery of any claim under this policy shall be sustainable in any court of law, unless such action or suit shall be commenced within the term of two years after such loss or damage shall have occurred..

In witness whereof, the ——— Casualty Company has caused this policy to be signed by its president and secretary, at ———, ———, but the same shall not be binding upon the company unless

countersigned by a duly authorized representative of the company.

_____, Secretary.	_____, President.
Countersigned at _____, this _____ day of _____, 19____.	
	_____, General Agent.
	Per _____.

1. See ante, vol. 5, ch. 131.

### 5768. Bankers' burglary policy.

Policy No. \_\_\_\_\_.

The \_\_\_\_\_ Casualty Company.

In consideration of the premium specified herein, and of the statements in the schedule hereinafter contained, in reliance upon which statements the issuance of this policy and the premium cost thereof are based, the \_\_\_\_\_ Casualty Company, of \_\_\_\_\_, hereinafter called the company, agrees to indemnify the assured hereinafter mentioned, for the period and in the respective amounts set forth in the schedule hereinafter contained:

A. For all loss by burglary of money and securities in consequence of the felonious abstraction of the same during the night or day from the safe or safes (or from the vault if contents are specifically hereunder insured) described in the said schedule and located in the banking room also described in said schedule and hereinafter called the premises, by any person or persons who shall break into such safe, safes (or vault) by the use of tools or explosives directly thereupon or any accessory to such entry;

B. For all loss by damage to money and securities, or to the safe, safes, or vault described in said schedule, or to the premises, or to the office furniture, utensils and fixtures therein, caused by such person or persons while making or attempting to make such entry into such premises, vault, safe or safes;

C. For all loss by "hold-up" (robbery) of money and securities feloniously, violently and forcibly abstracted from that part of the said premises railed or partitioned off by suitable counters or guard rails for the exclusive use of the officers and clerks of the bank, (or during the regular conveyance of such money and

securities between such counters and guard rails and any safe located outside of such counters and guard rails but within the premises) provided that at the time of such "hold-up" robbery one or more members of the working force of the bank shall be regularly at work in the bank;

D. For all loss by robbery of money and securities in consequence of the felonious abstraction of the same from that portion of any safe or vault, the contents of which is insured by this policy, provided direct and affirmative evidence shows entry into the same to have been made by wrongfully compelling through force or violence any officer or employé of the assured to unlock the same at any hour of the day or night or to aid in opening any such safe or vault.

E. Definition of "money"—The term "money" as used in this policy shall be deemed to mean currency, coin, bullion, bank notes (signed and unsigned) and United States postage and revenue stamps (not canceled).

F. Definition of "securities"—The term "securities" as used in this policy shall be deemed to mean bonds, coupons, debentures, checks, demand and time drafts, bills of exchange, certificates of deposit, certificates of stock, warehouse receipts, bills of lading, promissory notes, and express, pension, postal and bank money orders, and all other instruments, evidences of debt or documents of a negotiable character, which are negotiable by any holder thereof, and as respects which, when so negotiated, the assured has no recourse against the innocent holder, but no claim shall be allowed thereupon unless the assured has used all due diligence and means to stop payment thereon, nor unless payment thereon has been actually made after the robbery. Such "securities" as cannot be duplicated and have been destroyed as the result of the burglary or robbery shall be paid for at the full value thereof.

The foregoing general agreements are made subject to the following special agreements which shall be construed as conditions precedent to any recovery hereunder.

1. The assured upon discovery of any burglary, robbery or hold-up or attempt thereat shall give immediate notice thereof, by telegraph, to the home office of the company, in ——— and to the general agent who has coun-

tersigned this policy, briefly stating particulars and probable amount of loss (both telegraphic messages at the company's expense), and shall also give immediate notice thereof to the public police authorities having jurisdiction. The assured shall also forward to the home office of the company full written details of the nature of the loss. (Follow instructions on back of this policy).

2. The company shall be liable for the loss of overdue notes for their actual cash value not exceeding par and legal interest, provided the assured can furnish satisfactory proof that they are still valid and collectible.

3. Where the policy covers (a) the contents of a burglar-proof chest within a fire-proof safe, or (b) the contents of any safe within a fire-proof vault, ten per cent. (10%) of the insurance shall apply to subsidiary coin or securities, (a) outside of said chest, but within said safe, or (b) outside of said safe, but within said vault; and where the policy covers the contents of a burglar-proof chest within a burglar-proof safe, ten per cent. (10%) of the insurance against loss by burglary shall apply to money and securities outside of the chest but within the safe, and when the policy covers the contents of a chest or safe within a vault protected by a steel door not less than one and one-half (1½) inches thick, exclusive of bolt work ten per cent. (10%) of the insurance shall apply to money and securities outside of the chest or safe, but within the vault.

4. In the event of a burglary, robbery, or hold-up, or attempt thereat, the company agrees, if necessary, to furnish competent detective service to endeavor to apprehend and convict the person or persons engaged.

5. In case of misstatement in description of safe, vault or protective appliances, or failure to maintain watchman's and / or other service, as described in the schedule of this policy, the insurance hereunder shall not be forfeited, but the company shall pay the amount of indemnity which the premium paid would have purchased at the rate charged by the company for the actual hazard.

6. The assured shall immediately notify the company, by telegraph at its home office in —, if a lock-out occurs, and shall also give immediately by letter a full description of the way in which the safe or vault was opened, how and by whom repaired, and whether it is the intention of the assured to continue its use, otherwise this insurance shall cease and determine.

7. The company shall not be liable:—(a) for loss of securities, unless they belong to the assured or are held in trust or as collateral for loans made and unless after their loss they shall have been presented to and been paid by their respective makers or by the offices upon which drawn, and no claim shall be allowed thereupon unless the assured has used all due diligence and proper means to stop payment thereof; (b) for loss of securities for an amount in excess of the cash or market value of same at the date of loss; (c) for loss or damage if the assured, or any associate in interest, servant or employé, or other person lawfully upon the premises is concerned as principal or accessory; (d) if the books and accounts of the assured and daily tally of money are not so kept that the loss may be accurately determined therefrom; (e) for loss by "burglary" of money or securities from any safe containing a steel burglar-proof chest, unless the same shall have been abstracted from

the chest nor unless said chest has been broken into by the use of tools or explosives directly thereupon; except in case insurance has been issued to attach specifically by endorsement in any other part of such safe, and then only in the amount specifically provided by such endorsement, or as provided in special agreement 3; (f) for loss by burglary of money or securities located in a round or screw-door safe or in any safe containing a round or screw-door chest, if the same shall have been abstracted from any compartment of such safe which is not protected by the round or screw-door except as provided in foregoing special agreement (e); (g) for damage to property or to premises except as to the assured's interest therein or responsibility therefor, nor shall it reimburse the assured for more than the actual cash value of the same at the date of loss; (h) unless the assured shall use due and reasonable care to protect his premises, property and himself against such "burglary," "robbery" or "hold-up"; (i) for loss under insuring clause D above, unless the safe (or vault, if contents be specifically insured) is equipped with a time lock; (j) for loss from, or contributed to by, undue exposure of any safe or vault during repairs to it or to the building in which it is contained; (k) for loss from, or contributed to by:—explosives, unless used by burglars or robbers; fire, water, invasion, insurrection, strikes, riot or war; the act of any civil, military or usurping power; the action of the elements; (l) unless all time and combination locks are regularly used when bank is closed.

8. In the event of a claim for loss or damage arising under this policy the same shall be made forthwith in writing, duly subscribed by the assured and certified to in manner required by the proof of loss form in use by the company. The said loss form will be delivered to the assured upon demand, but the delivery of the said loss form shall not be held to be a waiver of any provision or condition of this policy or of any forfeiture thereof, nor shall any action taken in connection with the investigation of any claim be considered as such waiver.

9. The company and its representatives shall have the right and opportunity, to inspect the premises of the assured at all reasonable times, and the assured shall in substantiation of his claim and to facilitate the adjustment thereof produce, at the place of loss, whenever requested, any and all books, papers and vouchers bearing in any way upon the claim made, and shall submit himself and associates in interest and his household and employees to examination and interrogation by the company's representatives, under oath if required, and subscribe to the same, and shall produce such other evidence as may be reasonable required to substantiate the claim, and such reasonable adjournments of the said examinations as the company may desire shall be allowed, and any of the parties, including the assured, so appearing for examination, shall upon the demand of the company be again produced for a second and further interrogation and any alleged loss, in connection with which the assured shall refuse to comply with this provision shall not be held to constitute a cause of action against the company under this policy. The company, if it so elects, shall have the entire charge of the prosecution of the offenders and the assured shall give to the company all reasonable assistance (not pecuniary) in legal proceedings or for recovery of the property insured.

10. Any loss of which satisfactory proof has been given to the company



shall be payable immediately upon the submission of such proof, and all sums which, from time to time, may be paid or expended by way of indemnity to the assured under this policy, shall be accounted in diminution of the sum insured, but any money and / or securities recovered by the assured and retained shall not be counted in diminution of the insurance but only in diminution of the loss. No suit shall be brought under this policy until ninety days after the particulars of the loss as required herein have been furnished to the company, nor at all, unless commenced within fifteen months from the time of the loss. In case of loss under this policy the company shall be subrogated to all claims or rights of the assured in respect to such loss against any other party or parties to the extent of the company's loss, and the assured shall execute any and all papers required to secure to the company such claims or rights.

11. The company may repair any damage to vault, safe and property and it may replace any damaged or stolen article with one of like quality, pattern and value instead of paying for the same in money. When so replaced, the damaged or stolen article shall belong to the company, but the assured shall be entitled to it upon payment to the company, the cost of its replacement or the amount paid in money on account of its loss. If the assured has returned to him or recovers any funds or property for the loss of which he has been indemnified he shall report the recovery to the company immediately, and either repay to the company the amount of the loss thereupon or forward the funds or property to the company at its home office.

12. This policy shall be void and thereupon cease and determine if the conditions or circumstances of the risk are materially changed without the written consent of the company endorsed hereon; or, if the assured defrauds or attempts in any way to defraud the company; or, if the policy is assigned without the written consent of the company, duly executed on the part of the company, or, if the property insured hereunder be or become incumbered by a chattel mortgage or bill of sale. If the assured, or any other party in interest, carry a policy of another insurer covering in whole or in part property insured by this policy, he shall not be entitled to recover from this company a larger proportion of the amount of the loss than the sum hereby insured bears to the whole amount of the valid and collectible insurance. Due notice of such other insurance when effected must be given to this company and endorsed in writing hereon.

13. This policy may be canceled at any time by five days' written notice personally served upon the assured by a representative of the company or sent by registered mail to the assured at the address of the said premises. In either case the assured shall be entitled to receive the unearned premium computed pro rata. The assured may require the cancellation of the policy at any time and the company shall retain in such case the earned premium computed at customary short rates, a table of which is printed on the back of this policy. The check of the company or its agent for the unearned premium mailed to the address of the assured herein given shall be a sufficient tender of payment.

14. No agent has authority to change this policy or waive any of its provisions, nor shall any notice to the agent or knowledge of his or any other person be held to effect a waiver or change in this contract or in any part

of it. Whenever the written consent of the company is required by the terms of this policy, an endorsement expressing same must be added hereto, signed by some executive officer of the company, and no change whatever in this policy or waiver of any of its provisions shall be valid unless an endorsement is added hereto executed in the same manner. Any endorsement (or rider) to this policy, extending or limiting the insurance hereunder, shall be subject to all stipulations and provisions of such endorsement (or rider) and to those herein contained, not conflicting with the special terms of such endorsement (or rider), and shall be equally as binding upon the company and the assured as if incorporated herein.

### 5769. Life insurance policy.

No. —.

Age —.

The — Life Insurance Company

Agrees to pay — dollars to —, — of the insured or to such other beneficiary as may have been duly designated, at the home office of the company, in the city of —, immediately upon proof of the interest of the claimant and the receipt of due proofs of the death of —, the insured, of the county of —, state of —, and the surrender of this policy properly receipted..

Change of beneficiary. The insured may, without expense, at any time during the continuance of this policy, provided the policy is not then assigned, change the beneficiary or beneficiaries, by written notice to the company at its home office, accompanied by this policy; such change to take effect on the indorsement of the same on the policy by the company. If there shall be no beneficiary living at the death of the insured, the proceeds of this policy shall be paid to the executors, administrators or assigns of the insured.

This policy participates annually in the profits of the company.

Beginning with the payment of the second annual premium and annually thereafter, upon the payment of premiums, this policy while in force will be credited with a dividend from the surplus apportioned by the board of directors of the company; but such dividends shall be due and payable only upon payment of the premium for the succeeding year. Unless the owner of this policy shall elect otherwise in writing the dividend shall be applied to the payment of premiums if any be due, otherwise will be held to the credit of the policy as provided in option four below.

The dividends subject to the foregoing shall be:

First. Paid in cash, or

Second. Applied toward the payment of the premium for the succeeding year, or

Third. Applied to the purchase without re-examination of participating paid-up additions to the policy, or

Fourth. Left to accumulate to the credit of the policy with interest at three and one-half per centum per annum and payable at the maturity (by death or otherwise) of the policy, but withdrawable on any anniversary of the policy. When such accumulated dividends together with the reserve value of this policy shall amount to not less than the net single premium for this insurance at the attained age, the insured shall have the option of converting this policy into a paid-up annual dividend participating policy for the full amount insured hereby, or may continue the payment of premiums until such time as the reserve and the accumulated dividends amount to not less than the principal sum insured by this policy, whereupon this policy shall mature as an endowment and the principal sum named herein shall be paid to the insured.

The reserve value of this policy shall be invested in approved interest bearing securities, which shall be deposited with the state of —, in trust, for the benefit of this policy in accordance with laws of said state.

— payment life annual dividends.

Premiums.—1. This policy is based upon the payment of premiums annually in advance and same are payable at the home office of the company in the city of —, or to any agent of the company upon delivery, on or before date due, of a receipt signed by the president, vice president or secretary and countersigned by said agent.

2. On written request the mode of premium payment may be changed, on any anniversary of the policy, from annual to semiannual or quarterly, or vice versa.

3. In case any premium is not paid when due, according to the terms of this contract, then this policy shall cease and determine, except as otherwise herein expressly provided. That part of the year's premium unpaid at maturity of this policy shall be deducted from the amount of the claim. Except as herein provided, the payment of a premium or instalment thereof shall not maintain the policy in force beyond the date when the next premium or instalment thereof is payable. No premium shall be construed as paid, either wholly or in part, by reason of dividends remaining with the company.

**Grace in Payment of Premiums.**—After this policy has been in force one year, thirty days' grace will be allowed in payment of premiums. with interest for the time taken at the rate of six per cent. per annum, during which time this policy will continue in force. If death occur within the days of grace the unpaid portion of the premium for the then current policy year shall be deducted from the amount payable hereunder.

**Loans.**—After three full years' premiums have been paid, the company at any time, while this policy is in force, will loan, on proper assignment of this policy and on the sole security thereof, at a rate of interest not greater than six per cent. per annum, which interest if not paid annually shall be added to the principal and bear the same rate of interest, a sum not exceeding the loan value at the end of the current policy year on this policy, as provided in the table below, and on any dividend additions thereto. The company, however, will deduct from such loan value any existing indebtedness to the company on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year. Failure to repay any such loan or to pay interest shall not avoid this policy unless the total indebtedness hereon to the company shall equal or exceed such loan value at the time of such failure, nor until thirty days after notice shall have been mailed by the company to the last known address of the insured and of the assignee, if any.

**Nonforfeiture Provisions.**—After this policy shall have been in force three full years, the owner, within the days of grace or within thirty days thereafter, may elect one of the methods of surrender settlement shown in the table of loan and surrender values below, namely:

(a) To purchase nonparticipating paid-up insurance, payable at the same time and on the same conditions as this policy. (Provided, however, said paid-up insurance shall be participating if this option is exercised after ten full annual premiums have been paid.)

(b) To accept the value of this policy in cash, or

(c) To have the insurance continued in force from due date of premium in default, without future participation and without the right to loans, for its face amount, including any outstanding dividend additions, less any indebtedness to the company hereon.

The term for which insurance will be continued or the amount of paid-up policy will be such as the cash value of the option, after deducting all indebtedness and adding the reserve value of any dividend additions, will purchase, computed by the method employed in the table below, as a net single premium at the attained age of the insured according to the American experience table of mortality and interest at the rate of three and one-half per cent. per annum. If the owner shall not make an election as aforesaid and surrender this policy to the company at its home office for endorsement for paid-up insurance, or for a cash surrender value, as provided in options (a) and (b) the insurance will be automatically extended as provided in option (c). The figures in the following table are computed upon the assumption that there is no indebtedness on the policy.

Table of loan and surrender values (here insert table).

The reserve on this policy and the above values are based upon the American experience table of mortality with three and one-half per cent. interest.

Values for later years will be equal or equivalent to the full reserve according to the foregoing standard and will be furnished on request. The first year's insurance under this policy is term insurance, purchased by the whole or part of the premium to be received during the first policy year and the policy shall be valued according to its terms and the laws of the state of Indiana. If semiannual or quarterly premiums are paid in addition to payments for entire years, the values will be proportionately adjusted.

**Special Nonforfeiture Provision.**—If this policy shall lapse for nonpayment of premium after being in force two full years, the company will continue the insurance under the policy for a period of ninety days from the due date of such premium; provided, however, if death should occur during said period of extension, the unpaid premium for the current year shall be deducted. (If the policy has been in force for three or more full years, see table above.)

**Reinstatement.**—At any time within five years from default in payment of premium this policy may be reinstated, upon production of evidence of insurability satisfactory to the company and approved at its home office, and upon payment or reinstatement of any indebtedness to the company hereon or secured hereby, and payment of arrears of premiums, with interest at the rate of five per cent. per annum.

**Instalment Option.**—The amount insured under this policy is payable in one sum, but may be made payable instead in equal annual instalments in any number from two to twenty-five, or may be made payable to the beneficiary in equal annual instalments, to continue for twenty years and so long thereafter as the beneficiary shall live; subject to the terms and conditions under the heading "Instalment Option" on the fourth page hereof.

**Trust Fund Option.**—When this policy becomes payable as a claim, the amount insured or any portion thereof may be left during the lifetime of the beneficiary in trust with the company, and the company will pay thereon interest at the rate of three and one-half per cent. per annum, together with such annual dividend as may be apportioned by the company. The said trust fund shall be paid at the death of the beneficiary to the executors, administrators or assigns of the beneficiary, but may be withdrawn at any time with accrued interest.

**Incontestability.**—This policy shall be incontestable after one year from its date, except for nonpayment of premiums and except for violation of the conditions of this policy relating to military and naval service in time of war. Any error in statement of the age of the insured will be adjusted by the payment of such amount as the premium actually paid would have purchased at the correct age, or by return of any excess of premium which may have been paid. This policy with the application therefor contains the entire contract between the parties, and all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties. No such statement shall avoid or be used in defense to a claim under the policy unless it is contained in the application, a copy of which is hereto attached.

**Residence, Travel or Occupation.**—This policy is free from any restrictions as to residence, travel or occupation, except military or naval service in time of war, for which permission must be obtained, at the company's regular rates.

Assignments.—The company declines to take notice of any assignment of this policy until the original assignment, or a duplicate or certified copy thereof shall be filed in the company's home office. The company will not assume any responsibility for validity of an assignment.

Suicide.—If within one year from date hereof the insured shall die by suicide, whether sane or insane, the liability of the company shall not exceed the amount of premiums paid on the policy.

Limitation of Action.—No suit shall be brought against the company for a claim under this policy after six years from the time when the cause of action shall accrue, and it is agreed that, in case of a claim by death, cause of action, if any, shall accrue on the date of death of the insured.

Indebtedness.—Any indebtedness to the company on account of this policy will be deducted in any settlement under this policy, or from any benefit thereunder.

Change of Plan.—This policy may be exchanged, subject to the company's rules, without medical re-examination for any other form of policy issued by the company at the date hereof, provided the amount of insurance shall not be greater, or the rate of premium less than under this policy. The new policy shall bear the date of this policy and the premium shall be at the rate now in use for the form chosen.

Modifications, Etc.—No person, except the president, vice president or secretary at its home office in — has power on behalf of the company to make, modify or alter this policy, to extend the time for paying a premium, to bind the company by making any promise or by accepting any representation or information not contained in the application for this policy. Any interlineations, additions or erasures must be attested by the signature of one of the above named officers.

Notice.—The insured under this policy is a member of the — Life Insurance Company. The annual meetings of the company are held at its home office in — on the second Monday of January in each year. Members are entitled to vote at such meetings either in person or by proxy.

After delivery of this policy to the insured it takes effect as of the — day of — one thousand nine hundred and —.

This agreement is made in consideration of the written and printed application for this policy, a copy of which is hereto attached and made a part of this contract, and the payment of — dollars in advance, in exchange for the company's receipt on the delivery of this policy, constituting payment for the period terminating on the — day of —, one thousand nine hundred and —, and of the payment of a like sum, the — annual premium, to the company at its home office, in the city of —, on the — day of — in every year during the continuance of this policy, or until — full annual premiums, including the first year, have been paid.

In witness whereof, the — life insurance company has caused this policy to be signed by its president and vice president, and countersigned by its secretary.

\_\_\_\_\_,  
Vice President.

\_\_\_\_\_,  
President.

\_\_\_\_\_,  
Secretary.

Examined  
\_\_\_\_\_

1. See ante, vol. 5, ch. 129.

### 5770. Steam boiler policy.

No. \_\_\_\_.

\$ \_\_\_\_.

The — Casualty Company,

In consideration of — dollars (\$—) the — casualty company, of —, hereinafter called the company, hereby insures — of —, hereinafter called the assured, for the term of — months, beginning on the — day of —, 19—, at noon, and ending on the — day of —, 19—, at noon, standard time, at the place where this policy has been countersigned, against all immediate loss or damage caused by explosion, collapse or rupture of any boiler or boilers, described in the schedule of this policy, as follows:

A. For damage to the boiler or boilers, and other property of the assured.

B. For damage to the property of any other person or persons for which the assured may be liable.

C. For loss from liability of the assured for bodily injuries, including death at any time resulting therefrom, sustained by any person or persons; but the liability of the company for loss of life or injury of any one person shall not exceed the sum of five thousand dollars, nor exceed the amount of this policy, if it be for a less sum than five thousand dollars.

D. The company will, in addition to the limits set forth in clause E, pay: (1) the expenses it incurs in defending any suit brought against the assured; (2) the interest accruing on any verdict or judgment in such suit and (3) any court costs taxed therein against the assured.

E. The liability of the company under this contract for any one accident shall under no circumstances exceed — dollars (\$—); the same limit being applicable to all subsequent accidents during the life of the policy.

Subject to the following conditions and agreements:

1. In the event of loss under this policy, the company shall first settle for direct property loss, or for damage to the property of others, or for personal injuries, as the assured may elect.

2. The assured, upon the occurrence of an accident, and upon notice of any claim on account of an accident, shall give immediate notice in writing of such accident or claim, with the fullest information available, to the company, at its office in —, or to the agent who shall have countersigned this policy. If thereafter any suit even if groundless is brought against the assured to enforce a claim for loss or damage on account of any explosion, collapse or rupture covered by this policy, the assured shall immediately forward to the company at its home office every summons or other process as soon as the same shall have been served on him, and the company will defend such suit in the name and on behalf of the assured, or settle the same.

3. In the event of accident covered by this policy, the company shall have reasonable time and opportunity to examine the premises and property of the assured before repairs are undertaken or physical evidences of the occurrence removed, except for protection or salvage. The company may repair or replace the property damaged or lost and hereby insured, or pay the loss in money, as the company may elect; but in no case shall the claim be for more than the actual and immediate damage insured against, estimated according to the true cash value of the property at the time of the explosion. The assured shall not incur any expense as respects property of his own damaged, or the property of any other person damaged, without the consent of the company previously given in writing. In event of disagreement as to the amount of property loss, the same shall be ascertained by two competent and disinterested appraisers, one to be chosen by the assured and one by this company; the two so chosen to select a third person to act as umpire to decide upon items upon which the two may disagree, and the award of any two of them shall determine the amount of loss; the assured and the company to pay the appraisers respectively chosen by each and to pay equally for the umpire and expense of the appraisal.

4. If at the time of an explosion, collapse or rupture there is any other insurance against loss or damage to the assured, resulting from loss of life or injury to any person or persons, then the insurance by this policy against such loss or damage is to be excess insurance, and not contributing insurance, and shall become effective and applicable only after such other insurance has been exhausted in the payment of claims; but if there is no other insurance against loss or damage to the assured, resulting from loss of life or injury to any person or persons, then the insurance against such loss or damage by this policy is to be immediately effective and applicable as herein provided.

5. If any person is injured by an explosion, collapse or rupture, and the assured then has no other insurance against loss resulting from such injuries



or liability therefor, a claim by said person for damages covered by this policy may be settled by the assured on the basis of loss of wages and reasonable medical expenses of the injured person during the time that he has been totally disabled by said injuries, without prejudice to the rights of the assured under this policy, and the company will reimburse the assured for said expenditure upon receipt of a valid release.

6. This company or its representatives shall have the right at all reasonable times to inspect the boilers. Any inspector of this company is authorized to suspend the insurance under this policy, as respects any boiler or boilers, until defects or dangers reported by him are removed to the satisfaction of this company. Notice of such suspension and the reason therefor and of reinstatement must be in writing. The assured will, on demand, be paid a return premium for the period of suspension pro rata.

7. If there shall be any other similar insurance against property loss, the assured shall in no event demand or recover of the company any greater proportion of the loss or damage to property than the insurance applicable under this policy to such loss or damage bears to the whole amount of insurance thereon.

8. This policy may be canceled at any time by either of the parties upon five days' written notice to the other party at the address given herein, and the date of cancellation shall then be the end of the policy period. If such cancellation is at the company's request, or at the assured's request, when actually retiring from business, the earned premium shall be computed and adjusted pro rata. If such cancellation is at the assured's request, and he is not retiring from business, the customary short rate premium shall be charged for the time the policy was in force. The company's check for the amount due on cancellation mailed to the assured at his address given in this policy shall be a sufficient tender.

9. By "explosion, collapse or rupture" shall be understood a sudden and substantial collapse or violent tearing asunder of any part or parts of a boiler by force of steam pressure. By "boiler" shall be understood a vessel used solely for the generation of steam, including the safety valve and all connecting pipes and fittings up to and including the valve nearest the boiler in each of same. Rotaries, digesters, dryers, etc., will be insured only when specifically described in the schedule. The fittings of such a vessel will be insured up to and including the valve nearest it.

10. This policy does not cover—(1) Any loss unless such loss is caused immediately or solely by an explosion, collapse or rupture, as defined above; (2) Any explosion, collapse or rupture caused by fire or conflagration; (3) Any loss from fire or conflagration caused by explosion or otherwise; (4) Any loss due to stoppage of plant or works or other indirect result of an explosion, collapse or rupture; (5) Any loss in case the safety valve of any boiler covered by this policy is set for a greater pressure than allowed by the company. It is understood, however, that this exemption shall not apply until after the boilers have been inspected and report submitted.

11. In case of loss under this policy the company, to the extent of its interest, shall be subrogated to all claims or rights of the assured as respects such loss against any third party or parties, and the assured shall execute all papers required to secure to the company said rights.

12. No assignment of interest under this policy shall be valid unless the company's consent is endorsed hereon.

13. No waiver, alteration or modification of anything contained in this policy shall be valid unless endorsed hereon by the president or secretary of the company.

14. No person shall be deemed the agent of the company in connection with this insurance unless duly authorized in writing.

In witness whereof, the ——— casualty company has caused this policy to be signed by its president and secretary at ———, ———, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,  
Secretary. President.

Countersigned at ——— this ——— day of ———, 19—.

\_\_\_\_\_,  
General Agent.  
Resident Manager.

#### 5771. Accident policy.

The ——— Company of ———, ———.

In consideration of ——— dollars, premium, and subject to all the conditions and limitations hereinafter contained, hereby insures ——— of ———, county of ———, state of ———, by occupation ———, hereinafter called the insured, from ———, 19—, to ———, 19—, commencing and ending at noon, standard time at the place where this policy is countersigned, against bodily injury caused solely by accidental means, suicide sane or insane not included, as follows: (here insert schedule).

If an injury shall result in any one of the losses enumerated in schedule A and shall from the date of the accident and independently of any and all other causes directly, immediately, totally and continuously disable and prevent the insured from performing any and every duty pertaining to his occupation, the company will pay for such loss the sum specified in section I of schedule A, and in addition thereto will pay, from the date of the accident to the date of loss, the weekly indemnity at the rate herein provided.

#### LOSS OF TIME.

Weekly Indemnity \$——. Maximum Weekly Indemnity \$——.

If an injury shall result in a loss not enumerated in Schedule A, and shall,

from the date of the accident, directly, immediately, totally and continuously disable and prevent the insured from performing any and every duty pertaining to his occupation, the company will pay the weekly indemnity provided above for the period of such continuous total disability.

If an injury shall result in a loss not enumerated in Schedule A, and shall, either from the date of the accident or following total disability, directly, immediately, totally and continuously disable and prevent the insured from performing one or more of the important duties pertaining to his occupation, the company will pay for such partial disability one-half the weekly indemnity provided above for a period not exceeding fifty-two consecutive weeks.

If the injury causing such total or partial loss is sustained in the manner provided in the paragraph of this policy entitled "Double Benefits" the company will pay for such loss double the weekly indemnity provided above, for total or partial loss of time.

There shall be no loss under this policy unless the event causing the injury shall occur while this policy is in force.

The loss of a hand or foot shall mean the entire separation at or above the wrist or ankle; the loss of an eye or eyes shall mean that the sight of the eye or eyes shall be entirely and irrecoverably lost; the loss of thumb and index finger shall mean the severance thereof at or above the metacarpo-phalangeal joints; the loss of hearing shall mean total and permanent deafness of both ears.

The payment provided for the loss of life of the insured shall be made to the beneficiary, if surviving, otherwise to the legal representative of the insured.

Payment for any loss specified under schedule A together with payment of the weekly indemnity provided in the event of such loss shall terminate this policy.

If any one of the losses enumerated in schedule A is sustained while the insured is a passenger in or on a public conveyance provided by a common carrier for the regular transportation of passengers, including the platforms, steps and running boards of railway or street railway cars, or while the insured is a passenger in or on a passenger elevator, or in consequence of the burning of a building while the insured is therein, or caused by the collapse of the outer walls of a building while the insured is therein, or caused by the explosion of a steam boiler, or caused by a cyclone or tornado, or caused by a stroke of lightning, the company will pay the amount provided therefor in section 2 of schedule A headed "Maximum Sum," and in addition thereto, the maximum weekly indemnity at the rate per week herein specified to the time he suffers such loss.

If sunstroke, freezing, hydrophobia or the involuntary or unconscious inhalation of gas or other poisonous vapor shall, independently of all other causes, result in the death of the insured within ninety days from the date of exposure or infection, the company will pay the principal sum to the beneficiary, if surviving; otherwise to the legal representative of the insured, and in addition thereto will pay the weekly indemnity from the date of said exposure or infection to the date of death.

Sunstroke, freezing, hydrophobia or asphyxiation suffered through accidental means, excluding suicide, sane or insane, or any attempt thereat, sane

or insane, shall be deemed a bodily injury within the meaning of this policy.

Blood poisoning resulting directly from a bodily injury shall be covered under this policy.

If bodily injury shall not result in death, but shall, independently and exclusively of all other causes, disable and prevent the insured from performing any and every duty pertaining to his occupation, and shall, during the period of six months from the date of accident, result directly in his insanity, and by reason of which insanity the insured shall, within said period of six months, be committed to a state hospital for the insane or to a duly licensed sanitarium or asylum for the insane and shall there be continuously confined for a period of two years and at the expiration of said two years shall be irrecoverably insane, the company will pay to his duly authorized representative the principal sum as specified in schedule A, and in addition will pay to his duly authorized representative the weekly indemnity herein specified for said period of two years.

If bodily injury shall not result in death, but shall, independently and exclusively of all other causes, disable and prevent the insured from performing any and every duty pertaining to his occupation, and shall, during the period of ninety days from the date of accident, result in the insured being paralyzed, whereby he shall irrecoverably lose the entire use of both hands or both feet, or of one hand and one foot, and on account of which he shall be continuously disabled and prevented from engaging in any work or occupation for wages or profit for a period of fifty-two consecutive weeks from the date of such paralysis, and at the expiration of such period of fifty-two consecutive weeks shall be irrecoverably paralyzed, the company will pay to the insured the principal sum as specified in schedule A, and in addition will pay the weekly indemnity herein specified for said period of fifty-two weeks.

On proof of an injury resulting in a loss not specified under this policy but which requires treatment of the insured by a physician, surgeon, oculist or dentist, the company will reimburse the insured for the expense thereof, not to exceed the weekly indemnity herein specified for one week.

If the insured shall suffer a non-fatal injury, he may receive in lieu of all other benefits the indemnity specified in the "Schedule of Specific Injuries" endorsed hereon, provided he signifies his choice in writing, to the company at its home office within two weeks from the date of injury.

If such non-fatal injury is sustained as provided for in the paragraph of this policy headed "Double Benefits" the sum payable shall be double the amount provided for in the "Schedule of Specific Injuries."

No claim shall be valid for more than one of the losses in the "Schedule of Specific Injuries" as the result of any one accident.

If the insured shall suffer bodily injury for which weekly indemnity shall be paid under this policy, and if on account of such bodily injury and within ninety days of the date of the accident, the insured is removed to a hospital, the company will pay the insured for a period not exceeding ten consecutive weeks during which time he is confined to said hospital, double the amount of weekly indemnity that would otherwise be payable under this policy, provided that the insured shall not make any claim under the section of this policy entitled "Schedule of Surgical Operations." Indemnity under this

section shall not be paid if the insured shall be entitled to indemnity under the section to this policy entitled "Double Benefits."

Claims for weekly indemnity for disability of more than two months' duration shall be paid at the end of each second month if satisfactory proof of continued disability is furnished before payment.

Upon receipt of the premium for this policy, the company will forward to the insured a certificate of identification wherein it is agreed that, if he shall during the term of this policy or any renewal thereof be physically unable to communicate with relatives or friends, the company will, on receipt of information giving the certificate and policy numbers, at once use all reasonable means and defray all expenses necessary for placing him in their care, not exceeding one hundred dollars.

If a bodily injury shall within ninety days from the date of injury and as a direct and proximate result thereof necessitate any surgical operation mentioned in this schedule, the company will pay, in addition to the weekly indemnity, the surgical operation-indemnity specified below; provided, that payment shall not be made for more than one operation as the result of any one injury.

The amounts in the following "Schedule of Surgical Operations" are payable under a policy for seven thousand five hundred dollars, principal sum. Proportionate amounts are payable if the policy is issued for a larger or a smaller sum.

Amputation of foot, hand or forearm (here set forth amount); leg or arm (here set forth amount); thigh (here set forth amount); thumb, finger or fingers (here set forth amount); toe or toes (here set forth amount).

Abscess or boil—Incision (here set forth amount).

Bones—Removal of diseased portion (here set forth amount); curetting only (here set forth amount).

Dislocations—Reduction of shoulder, elbow, hip, knee or ankle (here set forth amount); two or more bones in body of hand or foot, not thumb, finger or toe (here set forth amount); wrist or lower jaw (here set forth amount); thumb, finger or fingers, toe or toes (here set forth amount).

Excision of shoulder, hip or knee joint (here set forth amount); elbow, wrist or ankle joint (here set forth amount).

Eye, ear, nose or throat—Any cutting operation (here set forth amount).

Fractures—Reduction of nose, lower jaw, collar bone, shoulder blade or forearm, one or both bones (here set forth amount); breast bone, coccyx, two or more bones in body of hand or foot, not thumb, finger or toe (here set forth amount); upper arm (here set forth amount); rib or ribs, thumb, finger or fingers, toe or toes (here set forth amount); any of the bones of the pelvis (here set forth amount); thigh (here set forth amount); kneecap or leg bone, one or both (here set forth amount).

Gunshot wounds—Treatment not necessitating amputation or laparotomy (here set forth amount).

Kidney—Fixation or removal (here set forth amount).

Laparotomy—Opening of the abdominal cavity for an operation on any organ contained therein, or for traumatic peritonitis, or exploratory incision (here set forth amount).

Skull—Trephining for fracture of both tables (here set forth amount).

Synovitis—Incision (here set forth amount).

Tetanus—Injection of anti-tetanic serum into frontal lobe of brain (here set forth amount).

Wounds—Suturing (here set forth amount).

1. This policy and copy of the application therefor signed by the insured, together with papers attached and endorsements thereon bearing the signature of the president or of one of the vice presidents, or of the secretary, or of one of the assistant secretaries of the company, shall constitute the entire contract of insurance, except as the same may be affected by any table of rates or classification of risks filed by the company with the insurance department of the state wherein this policy is issued and effective from the time of such issue or delivery.

2. No statement made by the insured, not incorporated in or endorsed hereon, shall avoid this policy or be used in evidence, and no provision of the charter or by-laws shall be used in defense of any claim under this policy unless such provision is incorporated in full in this policy; but this requirement shall not be deemed to apply to the table of rates or manual of classification of risks filed by the company prior to the date of the occurrence of the injury for which indemnity is claimed, with the state official having supervision of insurance companies in the state wherein this policy is issued.

3. In the event of any accident or disability for which claim may be made under this policy, notice of such accident shall be given in writing with full particulars, within twenty days from the date of the accident, or immediately in case of accidental death, provided such notices are reasonably possible.

4. In case of claim for loss of time, proof must be furnished to the company at its home office within one hundred twenty days after the termination of the period of such disability for which the company is liable and in case of loss of life, limb, or sight, within one hundred twenty days after the occurrence of such loss. Unless affirmative proof of paralysis be furnished to the company within sixteen months from the date of the beginning of said paralysis, any claim shall be invalid.

5. Notice of a claim for indemnity shall be deemed sufficient when given to the home office of the company or to a duly authorized agent of the company in the city, town or county in which the insured shall reside at the time of giving such notice.

6. The company will pay the benefits promised under this policy within sixty days after the receipt by the company of due proofs of death or disability.

7. If a past due premium shall be accepted on this policy by the company, or a branch office, or by a duly authorized agent of the company in the city, town or county in which the insured shall reside, or by the duly authorized agent who accepted the last premium under this policy, if so authorized at the time of the acceptance of the past due premium, such acceptance shall reinstate this policy in full as to disability resulting from accidental bodily injuries thereafter sustained.

8. If the insured is injured, fatally or otherwise, after having changed his occupation to one classified by the company as more hazardous than that herein stated, or while he is doing any act or thing pertaining to any such different occupation, except ordinary duties about his residence or while en-

gaged in recreation, the company's liability shall be for only such proportion of the benefits herein provided as the premium paid by him would have purchased at the rates and within the limits fixed by the company for such more hazardous occupation according to the table of rates and classification of risks filed by the company prior to the occurrence of the injury for which indemnity is claimed, with the state official having supervision of insurance companies in the state wherein the insured resides at the time this policy is issued.

9. Any medical adviser of the company shall have the right and opportunity to make a physical examination of the insured in respect to any alleged injury, as often and in such manner as the company may require, and where not forbidden by statute shall also have the right and opportunity to make an autopsy in case of death. If any autopsy is made on the body of the insured, opportunity shall be given the company to be represented under the direction of a public officer or by the consent of the insured's family.

10. The company reserves the right to cancel this policy at any time by written notice delivered to the insured or mailed to him at his last address, as shown by the records of the company, and the tender of the company's check for the unearned portion of the premium; but such cancellation shall be without prejudice to any claim arising on account of disability commencing prior to the date on which the cancellation takes effect.

11. No proceedings at law or in equity shall be brought against the company for recovery under this policy until after sixty days from the date of filing proofs, nor shall the same be brought at all unless commenced within two years from the date when final proof is filed with the company.

12. Upon the payment of any claim hereunder, any premium then due and unpaid or covered by any written pay order may be deducted therefrom.

13. This policy covers injuries received only within the civilized limits of the globe, including travel by regular lines of passenger conveyance.

\_\_\_\_\_,  
Secretary. \_\_\_\_\_,  
President.  
Countersigned at — this — day of —, 19—. \_\_\_\_\_, Agent.

1. See ante, vol. 5, ch. 130.

### 5772. Contractors' employers' policy.

No. —. \$—.

The — Casualty Company of —.

In consideration of — dollars (\$—) initial premium, which is based on the estimated pay-roll set forth in the schedule below, and which premium is calculated at the rate or rates, per \$100, of said compensation, named in the schedule below, and is to be adjusted, as stated below, at the same rate or rates, after the termination of this policy, on the actual compensation earned

during the policy period, the ——— casualty company, of ———, herein called the company, hereby agrees to indemnify ——— of ———, county of ———, state of ———, herein called the assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any employé of the assured while engaged in the occupation and at the places mentioned in the schedule below; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of ——— months, beginning on the ——— day of ———, 19—, at noon, and ending on the ——— day of ———, 19—, at noon, standard time, at the place where this policy has been countersigned. (Here insert schedule.)

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to ——— dollars (\$——), and, subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to ——— dollars (\$——).

In addition to these limits the company will, at its own cost (court costs, and all interest accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the company's liability as herein-before expressed, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as hereinafter required, unless the company shall elect to settle the claim or suit.

This policy does not cover any accident to, or caused by, any child employed by the assured contrary to law, or any child employed under fourteen (14) years of age where no statute restricts the age of employment. The wrecking or demolition of any building, or structure, or plant, or any part thereof, is not covered by this policy, unless specifically covered by endorsement hereon.

Immediately written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

The estimated compensation includes, and the adjustment of the same will include, all compensation of every kind earned by all officials and employés, except the following persons: the assured himself, if an individual; any member of the firm, if the assured be a firm; the president, vice president, secretary and treasurer, if the assured be a corporation.



In consideration of such exclusion from the estimated compensation and adjustment of same, accidents to persons so excluded are not covered under this policy, but accidents caused by persons so excluded are covered hereunder.

The compensation of drivers and drivers' helpers is excluded from the estimated compensation and adjustment of same if they are covered by a concurrent Teams Insurance Policy with this company. Drivers and drivers' helpers, if included in the pay-roll, are covered wherever they may be.

Within sixty (60) days after the termination of the policy period the assured shall furnish the company a statement of all compensation of every kind earned by all employes during the policy period. An authorized representative of the company shall have the right and opportunity to examine the books and records of the assured as respects such compensation, if said examination be made within twelve (12) months after the termination of the policy.

This policy may be canceled by either the company or the assured at any time by not less than five (5) days' written notice to the other, stating when the cancellation shall be effective. If canceled by the company, the company shall be entitled to the earned premium pro rata when determined. If canceled by the assured, unless the assured has retired from business, the company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. In either case the earned premium shall be computed on the entire compensation of all employes for the full original policy period, as indicated by the actual compensation earned by all employes during the time the policy shall have been in force. The company's check mailed to the address of the assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all employes of the assured during the period the policy shall have been in force shall have been furnished to the company by the assured.

The minimum premium for this policy in any event is ——— dollars (\$——).

In witness whereof, the ——— casualty company has caused this policy to be signed by its president and secretary at ———, ———, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,

Secretary.

\_\_\_\_\_,

President.

Countersigned at ———, this ——— day of ———, 19——.

\_\_\_\_\_, General Agent.

### 5773. General liability policy.

No. ———.

\$——.

The ——— Casualty Company of ———.

In consideration of ——— dollars (\$——), initial premium,

which is based on the estimated pay-roll and on the total area and street frontage of the buildings insured, and on the elevators, all as set forth in the schedule below, and which premium is calculated at the rates named in the schedule below, and is to be adjusted, as stated below, at the same rate or rates as to compensation, after the termination of this policy, on the actual compensation earned by all employés during the policy period, the ——— casualty company, of ———, herein called the company, hereby agrees to indemnify ——— of ———, county of ———, state of ———, herein called the assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any person or persons while within or upon the premises described in the schedule, or upon the sidewalks or other ways immediately adjacent thereto; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of ——— months, beginning on the ——— day of ———, 19—, at noon, and ending on the ——— day of ———, 19—, at noon, standard time, at the place where this policy has been countersigned. (Here insert schedule.)

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to ——— dollars (\$——), and, subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to ——— dollars (\$——).

In addition to these limits, however, the company will, at its own cost (court costs being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as herein-after required, unless the company shall elect to settle the same.

This policy does not cover any accident resulting in injuries or death to, or caused by, any child employed by the assured contrary to law, or any child employed under sixteen (16) years of age where no statute restricts the age of employment. Additions to, or alterations in or the construction of, any building, or structure, or elevator are not covered under this policy; nor is the wrecking or demolition of any building, or structure, or elevator, or any part thereof; but ordinary repairs when made by the regular employés of the assured are covered.

Immediate notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses

incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

The company or any of its inspectors may suspend this insurance because of any defect or dangerous condition found in the premises or elevators insured by this policy. Notice of such suspension and the reason therefor and of the reinstatement of the insurance must be in writing. A return premium for the period of suspension pro rata will be paid to the assured on demand.

Within sixty (60) days after the termination of the policy period the assured shall furnish the company a statement of all compensation of every kind earned by all employes during the policy period. An authorized representative of the company shall have the right and opportunity to examine the books and records of the assured as respects such compensation, if said examination be made within twelve (12) months after the termination of the policy.

This policy may be canceled by either the company or the assured at any time by written notice to the other, stating when the cancellation shall be effective. If canceled by the company, the company shall be entitled to the earned premium pro rata when determined. If canceled by the assured, unless the assured has retired from business, the company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. In either case the earned premium for that portion shall be computed on the actual compensation earned by all employes and officials of the assured during the time the policy shall have been in force. The company's check mailed to the address of the assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all employes and officials of the assured during the period the policy shall have been in force shall have been furnished to the company by the assured.

The minimum premium for this policy in any event is ——— dollars (\$——).

In witness whereof, the ——— casualty company has caused this policy to be signed by its president and secretary at ———, ———, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

Countersigned at ———, this ——— day of ———, 19——.

\_\_\_\_\_, General Agent.

#### 5774. Automobile policy.

In consideration of ——— dollars, (\$——) the ——— casualty company, of ———, herein called the company, hereby agrees to indemnify ——— of ———, county of ———, state of ———, herein

called the assured, against loss from liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered or alleged to have been suffered by any person or persons, and caused by the automobile vehicles owned or operated by the assured, as described in the schedule below, and for the purpose named therein, or by the loading or unloading of merchandise carried on such vehicles provided for the transportation of such merchandise, and so specified in the schedule, within the confines of the United States, Canada or Mexico, provided such bodily injuries or death are suffered or alleged to have been suffered as the result of accidents occurring within a period of — months, beginning on the — day of —, 19—, noon, and ending on the — day of —, 19—, noon, standard time, at the place where this policy has been countersigned.

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to — dollars (\$—), and subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to — dollars (\$—).

In addition to these limits the company will, at its own cost (court costs, and all interest accruing after entry of judgment regardless of the limits of liability expressed above, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as hereinafter required, unless the company shall elect to settle the claim or suit.

Immediate written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

Unless specifically indorsed hereon, this policy does not cover any obligation assumed by or imposed upon the assured by any workmen's compensation law, agreement or plan.

This policy does not cover while the automobile vehicle or

vehicles insured are being used for any race or speed contests; nor while the automobile or automobiles insured hereunder are being driven by any person in violation of the law as to age, or if there is no legal age limit, under the age of 16 years, nor claims arising from accidents to any person or persons while entering upon, riding in or upon, or alighting from the automobile or automobiles described herein, when such persons are to be, are being, or have been carried for a consideration either actual or implied.

This company is not responsible for any settlements made or any expenses incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

No action shall lie against the company to recover for any loss under this policy, unless it shall be brought by the assured personally, for loss actually sustained and paid in money by the assured in satisfaction of a final judgment after trial of the issue; nor unless such action is brought within ninety (90) days after such judgment by a court of last resort, against the assured, has been so paid and satisfied.

This policy may be canceled by the company at any time by written notice to the assured stating when the cancelation shall be effective. It may be canceled by the assured by like notice to the company. If canceled by the company, the company shall be entitled to the earned premium pro rata, when determined. If canceled by the assured, the company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. The company's check mailed to the address of the assured as given herein shall be sufficient tender of return premium.

No erasure or change appearing on the face of this policy as originally printed and no change or waiver of any of its terms or conditions shall be valid unless indorsed hereon by the president, a vice president, secretary or an assistant secretary of the company.

Notice to or knowledge by any agent or any other person shall not be held to waive any of the terms or conditions hereof.

In witness whereof, etc.

1. See ante, vol. 5, ch. 131.

### 5775. Elevator policy.

No. ———.

Premium \$——.

The ——— Casualty Company of ———.

In consideration of ——— dollars (\$——) premium and the statements hereinafter set forth in the schedule of statements, which statements the assured makes and warrants to be true by the acceptance of this policy, the ——— casualty company, hereinafter called the company, hereby agrees to indemnify ——— of ———, county of ———, state of ———, hereinafter called the assured, for a period of ——— months, beginning on the ——— day of ———, 19——, noon, and ending on the ——— day of ———, 19——, noon, standard time, at the place where this policy has been countersigned, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries or death, accidentally suffered while this policy is in force, by any person or persons while in the car of any elevators described in the schedule, or in the elevator-well or hoist-way thereof or while entering upon or alighting from such car, subject to the following conditions:

Condition A. The company's liability for loss from an accident resulting in bodily injuries to or in the death of one person is limited to ——— dollars (\$——), and, subject to the same limit for each person, the company's total liability for loss from any one accident resulting in bodily injuries to or in the death of more than one person is limited to ——— dollars (\$——).

Condition B. This policy does not cover loss from liability for injuries or death caused by any elevator while in charge of any person under the age fixed by law for elevator attendants, or under the age of eighteen (18) where no age is fixed by law, or caused to or by any person while making additions to or structural alterations in or extraordinary repairs of any elevator plant, unless a written permit is granted by the company specifically describing the work; but no elevator may be used for any service while additions to or alterations in or repairs of any kind are being made.

Condition C. Upon the occurrence of an accident the assured shall give immediate written notice thereof, with the fullest information obtainable at the time, to the company's home office or to the company's authorized agent. If a claim is made on account of such accident the assured shall give like no-

tice thereof with full particulars. The assured shall at all times render to the company all co-operation and assistance in his power.

Condition D. If thereafter any suit is brought against the assured to enforce a claim for damages on account of an accident covered by this policy, the assured shall immediately forward to the company's home office every summons or other process as soon as the same shall have been served on him, and the company will, at its own cost, defend such suit in the name and on behalf of the assured, unless the company shall elect to settle the same or to pay the assured the indemnity provided for in Condition A hereof.

Condition E. The assured shall not voluntarily assume any liability, nor shall the assured, without the written consent of the company previously given, incur any expense or settle any claim, except at his own cost, nor interfere in any negotiation for settlement or in any legal proceeding; except that the assured may provide at the time of the accident such immediate surgical relief as is imperative. Whenever requested by the company, the assured shall aid in securing information and evidence and the attendance of witnesses and in effecting settlements and in prosecuting appeals.

Condition F. No action shall lie against the company to recover for any loss under this policy unless it shall be brought by the assured for loss actually sustained and paid in money by the assured in satisfaction of a judgment after trial of the issue; nor unless such action is brought within ninety (90) days after such judgment, by a court of last resort, against the assured has been so paid and satisfied. The company does not prejudice by this condition any defenses to such action it may be entitled to make under this policy.

Condition G. In case of payment of loss under this policy the company shall be subrogated to all rights, to the amount of such payment, of the assured against any person or corporation, as respects such loss, and the assured shall execute all papers required and shall co-operate with the company to secure to the company such rights.

Condition H. If the assured carry a policy of another insurer, whether valid or not, against a loss covered by this policy, the assured shall not be entitled to recover from the company a larger proportion of the entire loss than the amount hereby insured bears to the total amount of his insurance.

Condition I. If the business of the assured is placed in the hands of a receiver, assignee or trustee, whether by the voluntary act of the assured or otherwise, this policy shall immediately terminate, but such termination shall not affect the liability of the company as to any accidents theretofore occurring; if the assured is a corporation, a change of title, or if a firm or individual, a change of title or of ownership shall in like manner terminate this policy, unless such change is consented to by the company, by an endorsement hereon, signed by its president, one of its vice presidents or its secretary.

Condition J. This policy may be canceled by the company at any time by written notice to the assured stating when the cancellation shall be effective. It may be canceled by the assured by like notice to the company. If canceled by the company, the company shall be entitled to the earned premium, pro rata. If canceled by the assured, the company shall be entitled to the earned premium calculated at short rates in accordance with the table printed

hereon. The company's check mailed to the address of the assured as given herein shall be a sufficient tender.

Condition K. Any of the company's authorized inspectors shall have the right and opportunity whenever the company so desires to inspect the premises and elevators of the assured; and the company or any of its inspectors may suspend this insurance because of any defect or dangerous condition. Notice of such suspension and the reason therefor and of the reinstatement of the insurance must be in writing. A return premium for the period of suspension pro rata will be paid to the assured on demand.

Condition L. No erasure or change appearing on the face of this policy as originally printed and no change or waiver of any of its terms or conditions or statements shall be valid unless endorsed hereon and signed by the president, one of the vice presidents or the secretary of the company. Notice to or knowledge by any agent or any other person shall not be held to waive any of the terms, conditions or statements hereof.

Condition M. No person shall be deemed an agent of the company unless such person is authorized in writing as such agent by the president, one of the vice presidents or the secretary of the company.

#### SCHEDULE OF STATEMENTS.

Statement 1. Name of assured —.

Statement 2. Address of assured —. (State street, town, county and state where head office is located.)

Statement 3. The assured is —. (State whether individual, copartnership, corporation, estate or other trustee.)

Statement 4. The places where the elevators are located, the number, the number of landings and the kinds of elevators at each place are as follows: (Here insert schedule, and state whether passenger; freight; passenger and freight; sidewalk, one-story, inside building; or hand hoist).

Statement 5. There is no elevator at any location designated which is not disclosed above, except as follows: —.

Statement 6. The interest of the assured is that of —. (State whether owner, lessee or tenant.)

Statement 7. All the elevators have been accepted from the builders as satisfactory, except as follows: —.

Statement 8. No elevator is now undergoing repairs except as follows: —.

Statement 9. If required by the company the assured agrees to remove the cylinder head and submit the piston rod to examination of the company unless such examination has been made within three years and the piston rod found in good order.



Statement 10. No company has canceled or refused to issue elevator or boiler insurance to the assured during the past three years, except as follows: —.

Statement 11. No company has insured this risk during the past two years, except as follows: —.

Statement 12. Inspection reports and other notices and correspondence are to be mailed to the assured at address given above or to —, at —. If to the latter it is by request of the assured who acknowledges such person as the proper agent for this purpose.

Statement 13. There is no other elevator insurance carried by the assured on any of the elevators except as follows: —.

In witness whereof, the — casualty company has caused this policy to be signed by its president and secretary, at —, —, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

Countersigned at —, this — day of —, 19—.

\_\_\_\_\_, General Agent.

#### 5776. Manufacturers' employers' policy.

No. —.

\$—.

The — Casualty Company of —.

In consideration of — dollars (\$—) initial premium, which is based on the estimated compensation set forth in the schedule below, and which premium is calculated at the rate or rates, per \$100 of said compensation, named in the schedule below, and is to be adjusted as stated below, at the same rate or rates, after the termination of this policy, on the actual compensation earned during the policy period, the — casualty company, of —, herein called the company, hereby agrees to indemnify —, of —, county of —, state of —, herein called the assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any employé of the assured while upon the premises or upon the sidewalks or other ways immediately adjacent thereto, provided

for the use of the employés or the public, occupied by the assured in the conduct of the business and at the places mentioned in the schedule below; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of — months, beginning on the — day of —, 19—, at noon, and ending on the — day of —, 19—, at noon, standard time, at the place where this policy has been countersigned.

(Here insert schedule.)

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to — dollars (\$—), and, subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to — dollars (\$—).

In addition to these limits, the company will, at its own cost (court costs, and all interest accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the company's liability as hereinbefore expressed, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as hereinafter required, unless the company shall elect to settle the claim or suit.

This policy does not cover any accident to, or caused by, any child employed by the assured contrary to law, or any child employed under fourteen (14) years of age where no statute restricts the age of employment. Additions to, or alterations in, or the construction of, any building, or structure, or plant are not covered under this policy; nor is the wrecking or demolition of any building, or structure, or plant or any part thereof; but ordinary repairs when made by the regular employés of the assured are covered.

Immediate written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

The estimated compensation includes, and the adjustment of the same will include, all compensation of every kind earned by all officials and employés, except the following persons:—the assured himself, if an individual; any member of the firm, if the assured be a firm; the president, vice president, secretary and treasurer, if the assured be a corporation.

In consideration of such exclusion from the estimated compensation and adjustment of same, accidents to persons so excluded are not covered under this policy, but accidents caused by persons so excluded are covered hereunder.

The compensation of drivers and drivers' helpers is excluded from the estimated compensation and adjustment of same if they are covered by a

concurrent Teams Insurance Policy with this company. Drivers and drivers' helpers, if included in the pay-roll, are covered wherever they may be.

Within sixty (60) days after the termination of the policy period the assured shall furnish the company a statement of all compensation of every kind earned by all employes during the policy period. An authorized representative of the company shall have the right and opportunity to examine the books and records of the assured as respects such compensation, if said examination be made within twelve (12) months after the termination of the policy.

This policy may be canceled by either the company or the assured at any time by not less than five (5) days' written notice to the other, stating when the cancellation shall be effective. If canceled by the company, the company shall be entitled to the earned premium pro rata when determined. If canceled by the assured, unless the assured has retired from business, the company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. In either case the earned premium shall be computed on the entire compensation of all employes for the full original policy period, as indicated by the actual compensation earned by all employes during the time the policy shall have been in force. The company's check mailed to the address of the assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all employes of the assured during the period the policy shall have been in force, shall have been furnished to the company by the assured.

The minimum premium for this policy in any event is — dollars (\$—).

In witness whereof, the — casualty company has caused this policy to be signed by its president and secretary at —, —, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

Countersigned at —, this — day of —, 19—.

\_\_\_\_\_, General Agent.

#### 5777. Teams policy.

No. —. \$—.

The — Casualty Company of —.

In consideration of — dollars (\$—) initial premium, which is calculated as shown in the schedule below and is to be adjusted as provided for below, at the same rate or rates per driver, after the termination of this policy, on the actual number of drivers employed by the assured during the policy period, the — casualty company, of —, herein called the company,

hereby agrees to indemnify — of —, county of —, state of —, herein called the assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any person or persons by means of the draft or driving animals or vehicles (not automobiles) of the assured, or by the loading and unloading of such vehicles, and the use thereof in the business described in the schedule below, while in charge of the assured or the assured's employés; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of — months, beginning on the — day of —, 19—, at noon, and ending on the — day of —, 19—, at noon, standard time, at the place where this policy has been countersigned. (Here insert schedule.)

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to — dollars (\$—), and, subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to — dollars (\$—).

In addition to these limits, the company will, at its own cost (court costs, and all interest accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the company's liability as hereinbefore expressed, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as herein-after required, unless the company shall elect to settle the claim or suit.

This policy does not cover any accident to any driver under sixteen (16) years of age, nor caused by any draught or driving animal or vehicle driven by or in charge of any person under the age of sixteen (16) years.

Immediate written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

Accidents caused by the draught or driving animals of the assured while at blacksmith shops, or being taken to or from such shops by persons other than his own employés, are covered under this policy.

Within sixty (60) days after the termination of the policy period the assured shall furnish the company a statement of all compensation of every kind earned by all drivers, whether regular or temporary, during the policy period. If the policy period be more, or less, than twelve (12) months, the

compensation shall be equated to a twelve (12) months' basis. The amount of said compensation shall be divided by — dollars (\$—), which is agreed upon as the annual wages per driver, and the quotient plus one team, if the assured drive a team himself, shall be the number of teams upon which the adjustment hereinbefore provided for shall be made. An authorized representative of the company may examine the books and records of the assured as respects said compensation, if said examination be made within twelve (12) months after the termination of the policy.

This policy may be canceled by either the company or the assured at any time by not less than five (5) days' written notice to the other, stating when the cancelation shall be effective. If canceled by the company, the company shall be entitled to the earned premium pro rata when determined. If canceled by the assured, unless the assured has retired from business, the company shall be entitled to the earned premium calculated at short rates, in accordance with the table printed on the back of this policy. In either case the earned premium shall be computed on the entire compensation of all drivers for the full original policy period, as indicated by the actual compensation earned by all drivers during the time the policy shall have been in force, plus one team, if the assured drive a team himself. The company's check mailed to the address of the assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all drivers of the assured during the period the policy shall have been in force, shall have been furnished to the company by the assured.

The minimum premium for this policy in any event is — dollars (\$—).

In witness whereof, the — casualty company has caused this policy to be signed by its president and secretary at —, —, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

Countersigned at —, this — day of —, 19—.

\_\_\_\_\_, General Agent.

### 5778. Marine employers' policy.

No. —.

\$—.

The — Casualty Company of —.

In consideration of — dollars (\$—) initial premium, which is based on the estimated pay-roll set forth in the schedule below, which pay-roll includes all compensation of every kind earned by all the officers and crews of the vessels named in the schedule, and which premium is calculated at the rate or rates, per \$100 of said compensation, named in the schedule below,

and is to be adjusted, at the same rate or rates, after the termination of this policy, on the actual compensation earned by all such officers and crews during the policy period, the ——— casualty company, of ———, herein called the company, hereby agrees to indemnify ———, of ———, county of ———, state of ———, herein called the assured, against loss from the liability imposed by law upon the assured for damages on account of bodily injuries, including death resulting therefrom, accidentally suffered by any of the said officers or crews while on duty on or about the vessels named in the schedule below; provided such bodily injuries or death are suffered as a result of accidents occurring within the period of ——— months, beginning on the ——— day of ———, 19—, at noon, and ending on the ——— day of ———, 19—, at noon, standard time, at the place where this policy has been countersigned. (Here insert schedule.)

The company's liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to one person is limited to ——— dollars (\$——), and, subject to the same limit for each person, the company's total liability for loss from an accident resulting in bodily injuries, including death resulting therefrom, to more than one person is limited to ——— dollars (\$——).

In addition to these limits the company will, at its own cost (court costs, and all interest accruing after entry of judgment upon such part thereof as shall not be in excess of the limits of the company's liability as hereinbefore expressed, being considered part thereof) investigate all accidents and defend all suits even if groundless, of which notices are given to it as hereinafter required, unless the company shall elect to settle the claim or suit.

This policy does not cover any accident to, or caused by, any child employed by the insured contrary to law, or any child employed under fourteen (14) years of age where no statute restricts the age of employment. Additions to, or alterations in any vessel are not covered under this policy; nor is the demolition of any vessel, or any part thereof; but ordinary repairs when made by the regular crews of the vessels named in the schedule are covered. This policy does not cover any injuries or death resulting from collision.

Immediate written notice of any accident and of any suit resulting therefrom, with every summons or other process, must be forwarded to the home office of the company, or to its authorized representative.

The company is not responsible for any settlements made, or any expenses incurred by the assured, unless such settlements or expenditures are first specifically authorized in writing by the company; except that the assured may provide at the time of the accident, at the expense of the company, such immediate surgical relief as is imperative.

Within sixty (60) days after the termination of the policy period the assured shall furnish the company a statement of all compensation of every

kind earned by all officers and crews during the policy period. An authorized representative of the company shall have the right and opportunity to examine the books and records of the assured as respects such compensation, if said examination be made within twelve (12) months after the termination of the policy.

This policy may be canceled by either the company or the assured at any time by not less than five (5) days' written notice to the other, stating when the cancelation shall be effective. If canceled by the company, the company shall be entitled to the earned premium pro rata when determined. If canceled by the assured, unless the assured has retired from business, the company shall be entitled to the earned premium, calculated at short rates, in accordance with the table printed on the back of this policy. In either case the earned premium shall be computed on the entire compensation of all officers and crews for the full original policy period, as indicated by the actual compensation earned by all officers and crews during the time the policy shall have been in force. The company's check mailed to the address of the assured shall be sufficient tender of return premium, but no return premium shall be payable until a statement of the actual compensation earned by all officers and crews during the period the policy shall have been in force, shall have been furnished to the company by the assured.

The minimum premium for this policy in any event is — dollars (\$—).

In witness whereof, the — casualty company has caused this policy to be signed by its president and secretary at —, —, but the same shall not be binding upon the company unless countersigned by a duly authorized representative of the company.

_____, Secretary.	_____, President.
Countersigned at —, this — day of —, 19—.	
_____, General Agent.	

1. See ante, vol. 5, ch. 132.

### 5779. Marine insurance policy.

Be it known that — as well in — own name as for and in the name and names of all and every other person or persons to whom the same doth, may or shall appertain, in part or in all doth make assurance and cause — and them, and every of them, to be insured lost or not lost, at and from — upon any kind of goods and merchandise, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat and other furniture, of and in the good ship or vessel called the —, whereof as master under God, for this present voyage, — or whosoever else shall go for master in the said ship, or by whatsoever other name or names

the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandises from the loading thereof aboard the said ship — upon the said ship, etc., and so shall continue and endure, during her abode there, upon the said ship, etc. And further, until the said ship, with all her ordnance, tackle, apparel, etc., and goods and merchandise whatsoever shall be arrived at — upon the said ship, etc., until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandise, until the same be there discharged and safely landed. And it shall be lawful for the said ship, etc., in this voyage, to proceed and sail to and touch and stay at any ports or places whatsoever — without prejudice to this insurance. The said ship, etc., goods and merchandise, etc., for so much as concerns the assured by agreement between the assured and assurers in this policy, are and shall be valued at —.

Touching the adventures and perils which we the assurers are contented to bear and do take upon us in this voyage; they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and countermart, surprisals, takings at sea, arrests, restraints, and detainments of all kings, princes, and people, of what nation, condition, or quality soever, barratry of the master and mariners, and all other perils, losses, and misfortunes, that have or shall come to the hurt, detriment, or damage of the said goods and merchandise, and ship, etc., or any part thereof. And in case of any loss or misfortune it shall be lawful to the assured, their factors, servants and assigns, to sue, labour, and travel for in and about the defence, safeguards, and recovery of the said goods and merchandise, and ship, etc., or any part thereof, without prejudice to this insurance; to the charges whereof we, the assurers, will contribute each one according to the rate and quantity of his sum herein assured. And it is especially declared and agreed that no acts of the insurer or insured in recovering, saving, or preserving property insured shall be considered as a waiver, or acceptance of abandonment. And it is agreed by us, the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy



of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we, the assurers, are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods to the assured, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of —.

In witness whereof we, the assurers, have subscribed our names and sums assured in London.

N. B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded—sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent., and all other goods, also the ship and freight, are warranted free from average, under three pounds per cent. unless general, or the ship be stranded.

#### 5780. General health policy.

The — Casualty Company.

In consideration of the warranties made in the application for this policy, and of the payment of the required premium, the — casualty company, of —, does hereby insure — of —, county of —, state of —, against disability by disease as follows:

For the period of not less than 7 days during which the insured shall, independently of all other causes, be necessarily confined to the house and wholly disabled and prevented by bodily disease, not hereinafter excepted, from transacting any and every kind of business, the company will pay a weekly indemnity of — dollars (\$—). Or, if such illness, while wholly disabling, as herein provided, does not necessarily confine him to the house, the company will pay one-half of the weekly indemnity payable for disability requiring confinement to the house; provided always the combined periods for which indemnity will be paid for any illness shall not exceed 26 consecutive weeks.

Upon satisfactory proof to the company that he has, as the re-

sult of disease contracted during the term of this policy, and not hereinafter excepted, entirely and irrecoverably lost the sight of both eyes, or permanently and entirely lost the use of both hands, or both feet, or of one hand and one foot, and also, that he has been for one year, and will thereafter, and during his life, by reason thereof, be permanently disabled from engaging in any work or occupation for wages or profit, the company will pay to him a sum equal to one hundred weeks indemnity at the rate provided for herein in lieu of all other indemnity.

If by reason of any disease not hereinafter excepted any of the operations specified in the schedule hereinafter contained shall be performed upon the insured by a physician or surgeon within ninety days from the commencement of such disease, the company will pay to the insured, in addition to the indemnity herein provided, as specified in the schedule, but payment shall not be made for more than one operation as the result of any one cause of disability.

If the rate of weekly indemnity for temporary disability under all health policies carried by the company providing surgical benefits aggregate \$25 or over, the amounts below shall be payable; if less than \$25, the payments shall be reduced proportionately.

ABSCISS. Incision.....	\$ 5
ABDOMEN. Cutting into abdominal cavity for diagnosis or treatment of organs therein.....	100
ANEURISM. Non-traumatic. Operation for, by tying of artery .....	35
APPENDICITIS. See Abdomen.	
BONE. Disease of. Removal of diseased portion of bone..	25
CARBUNCLE. Incision.....	5
CHEST. Cutting into thoracic cavity for diagnosis or treatment of organs therein.....	25
CANCER. Lip. Removal of, by cutting operation.....	25
EYE, EAR, NOSE. Any cutting operation.....	10
EYE. Removal of.....	50
GANGRENE. Amputation of fingers or toes, foot or hand..	25
GOITER. Cutting operation for permanent cure.....	75

HERNIA. Abdominal. Any cutting operation for radical cure of reducible, irreducible, or strangulated form..	100
HYDROCELE. Incision and treatment of sac.....	25
INFLAMMATION OF JOINT. Incision into joint.....	25
INTESTINAL OBSTRUCTION. See Abdomen.	
KIDNEY. See Abdomen.	
MASTOIDITIS. Cutting operation for removal of diseased bone .....	50
NERVE. Cutting operation for stretching.....	25
RECTUM. Cutting operation for	
Hemorrhoids, external.....	15
Hemorrhoids, internal.....	25
Prolapsed .....	25
Fistula in ano.....	20
Malignant stricture .....	100
SKULL. Cutting into cranial cavity for non-traumatic lesions	100
STRICTURE. Œsophagus. Cutting operation (external) for	100
STONE IN BLADDER. Removal of, by cutting or crushing operation .....	75
TAPPING OF	
Abdomen .....	25
Bladder .....	15
Chest .....	15
Ear drum .....	10
Hydrocele .....	10
Joints .....	10
TRACHEA. Cutting into for removal of foreign bodies or for relief of difficult breathing.....	35
THROAT. Any cutting operation.....	10
TUMORS. Removal of, by cutting operation.	
Malignant .....	50
Benign, removal of, by cutting operation.....	15
VARICOCELE. Cutting operation for permanent cure.....	25
VEINS. Varicose. Cutting operation for permanent cure..	25

1. This insurance does not cover disability resulting from (1) any disease for which the insured is not treated by a physician; (2) any disease or sickness resulting from injury by violence; (3) any disease or sickness occasioned by, or while engaged in military or naval service; or (4) any disease con-

tracted, or sickness or disability sustained in the tropics or in any part of Alaska, or the British possessions in America north of the sixtieth degree of north latitude. This insurance does not cover women nor persons under 18 or over 55 years of age.

2. This insurance does not cover disability from any disease contracted within fifteen days from noon of the day on which this policy is dated; nor does it cover disability for any period for which the insured has either made claim or may become entitled to indemnity, from this or any other company or association, for or on account of injuries by external and accidental violence.

3. If the insured carries health or sick benefit insurance in companies or associations, or both, providing for an aggregate weekly indemnity in excess of his average weekly earnings, this company shall pay only such proportion of this insurance as such earnings shall bear to the aggregate of the weekly indemnity of the entire insurance so carried.

4. The company may cancel this policy at any time by written notice mailed to the insured, at the residence address given in the schedule of warranties, with the company's check for the unearned portion of the premium paid therefor.

5. The company shall have the right and opportunity to examine the person of the insured when and so often as it requires in case of disease or sickness.

6. No claim hereunder shall be valid unless written notice is given to the company at —, —, or to the agent countersigning this policy, within ten days from date of commencement of any disability for which a claim is to be made, with full particulars thereof and the full name and address of the insured; nor unless thereafter proof of duration of disability is furnished to the company at its home office in —, —, within eight months from the commencement of the disease which caused the disability, which proof must affirmatively establish the fact that the disability was not the result of any one or more of the diseases or causes herein above excluded. Preliminary proof of permanent disability must be furnished to the company within fourteen months, and final proof thereof within twenty-four months from the commencement of the disease which caused disability. Legal proceedings for recovery hereunder shall not be brought before the expiration of three months from the date of filing final proofs at the company's home office; nor brought at all unless commenced within twelve months from the date upon which proofs of duration of temporary disability as the case may be, are filed at the company's office, which date is agreed to be the date when the cause of action shall accrue.

7. No agent has power to waive any condition of this policy; nor shall notice to, or the knowledge of, any agent or of any other person of anything not written in the schedule of warranties indorsed hereon, be held to effect a waiver or estoppel upon the company, or to change the terms of this contract.

8. That all of the following warranties made by the insured upon acceptance of this policy are true, viz.:

## SCHEDULE OF WARRANTIES.

A. My age is ——. B. Weight ——. C. Height —— feet —— inches.  
D. Color ——.

E. My residence is — street, city or town of —, county of —, state of —.

F. I am (member of firm employed by) —, of — street, town of —, state of —, whose business is that of —.

G. My occupation and the duties thereof are fully described as follows: —.

H. The weekly indemnity herein applied for does not, together with other insurance against sickness I now have in this or any other company or association, exceed my average weekly earnings.

I. I have no other insurance against accident or sickness in this company, and no insurance against accident or sickness in any company or association, and have made no application for insurance against accident or sickness upon which I have not been notified of the action thereon—except as herein stated: —.

J. No application ever made by me for insurance against accident or sickness has been declined, and no policy against accident or sickness ever issued to me has been canceled, or a renewal thereof refused, by this or any other company or association—except as herein stated: —.

K. I have never received indemnity for any accident or sickness from this or any other company or association—except as herein stated: —.

L. My habits of life are correct and temperate. I am in sound condition mentally and physically. My hearing or vision is not impaired. I have never had nor am I now suffering from or subject to fits, disorders of the brain, or any bodily or mental infirmity or deformity—except as herein stated: —.

M. I have not in contemplation any special journey or any hazardous undertaking—except as herein stated: —.

N. I have not been exposed within the last ten days to any contagious or infectious disease—except as herein stated: —.

O. I have not now, nor have I had during the past year, any local or constitutional disease—except as herein stated: —.

P. I have not received medical attention within the past two years—except as herein stated: —.

Q. I have not suffered, nor am I suffering from cataract or any disease of the eye—except as herein stated: —.

R. My last serious illness was caused by —, commenced —, and lasted —.

9. The term of this policy is twelve months, beginning at 12 o'clock noon, standard time, on the — (insert here date not less than fifteen days from date below—see Section 2) day of —, 19—, and ending at the same hour, but it may be renewed from year to year thereafter by payment of the premium of \$— in advance, subject to all provisions of the policy.

In witness whereof, the — casualty company has caused this policy to be signed by its president and secretary in the city of

—, and dated this — day of —, 19—; but the same shall not be binding upon the company until countersigned by a duly commissioned agent.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

No. —.

Countersigned by \_\_\_\_\_.

### 5781. Live stock insurance.

No. —. Premium —.

The — Live Stock Insurance Company.

\_\_\_\_\_, \_\_\_\_\_.

In consideration of the payment of — dollars (\$—) premium, and of the statements, promises and warranties contained in the application for insurance under this policy, which application is made a part of this contract, does insure — for the term of — months, beginning at noon on the — day of —, 19—, and ending at noon on the — day of —, 19—, to an amount not to exceed — dollars (\$—) against loss by death caused by disease or accident (fire or lightning included) of the following described live stock to wit: (here insert kind of stock, name, color, age, sum insured and remarks).

It is understood and expressly agreed that this policy is made subject to the terms, conditions, agreements and provisions set forth on the following pages.

At any time within sixty (60) days after satisfactory proof of loss has been made, and the same has been received at the company's home office in —, the loss under this policy shall be payable to the assured or to his duly authorized representative.

2. Should there be loss under this policy the assured shall forthwith give written notice to the home office of the company in —, setting forth:

The number of the policy and the name of animal.

The cause of death and the date thereof.

The name and address of the attending veterinary.

Assured shall also make, under oath, upon blank forms to be furnished by the company, within three (3) days after such forms shall have been furnished, proof of such loss, which proof shall embrace such information as the company may require, and shall thereafter furnish, under oath, such further information as may be required by the company. Assured shall also consent in writing, when requested by the company, within sixty (60) days from the date of loss and in such form as required by the company, to the

appraisement of any deceased animal, said appraisers to be selected one by the assured, one by the company, and a third by these two if they cannot agree, the appraisers to act under oath. A forfeiture of all claims against this company under this policy shall result from fraud or attempt at fraud by any false statement in any proof of loss or further verified information required by the company in case of loss, or for refusal to give such information under oath when requested.

3. When more than one animal is specified herein, insurance hereunder shall be several as to each animal and shall be specifically limited to the amount set opposite the name and description of such animal.

4. The company's officers who have passed upon the application herefor have issued this policy in the confident belief that each and every statement, warranty and promise in said application is made by the assured and that the signature thereto is in his own handwriting; that all the statements are true, the assured warranting the truth thereof; that there shall be a faithful compliance with all promises made by the assured, and that they are understood in the making thereof, and that all statements, warranties and promises are relied upon by the company in accepting the application and issuing this policy, the said application constituting the basis of and being a part of the consideration of this contract.

5. In any one of the following cases this policy shall be void as to any animal named and described therein:

(a) If the assured in his application has not fully and truly stated any circumstance or fact relating to the risk.

(b) If the assured has in any way misrepresented, suppressed or concealed any material fact, or if there has been fraud of any character whatever on the part of assured in securing this policy.

(c) If the assured has not entire, unconditional and sole ownership of the animal.

(d) If the assured now has or shall hereafter procure other insurance on said animal (fire and lightning excepted), whether valid or invalid, without first securing the written consent of the company's secretary, such consent to be attached to or indorsed on this policy.

(e) If the assured parts with, sells or alienates said animal or any interest therein, or hires out or loans the use thereof to another, or mortgages, or by any process suffers any lien to be created or acquired on said animal, or assigns or attempts to assign this policy, in whole or in part, without the written consent of this company, attached to or indorsed thereon by the company's secretary.

(f) If under any legal process said animal shall be taken, seized or sold.

(g) If the assured animal be used for other purpose than stated in said application, and which other purpose, according to the company's table of rates, requires a greater premium than for insurance thereunder.

(h) If the application contains an untruth with respect to any statement, answer, representation or description therein.

(i) If on the part of the assured there shall be any violation or breach of any agreement, promise, covenant or warranty on his part to be fulfilled, whether set forth in his application or in this policy, or both.

6. This company shall not be liable in case of death of any animal hereby

insured the age or use of which or the cost or value of which is different from that stated in the application; nor for a death occasioned by the carelessness or negligence of the assured, his agent or employé; nor for a death occasioned by accident, disease or sickness if the assured shall have failed to give to the company immediate notice of such accident, disease or sickness, with the name and address of the veterinary employed, or shall have failed to employ a competent veterinary to attend such animal; nor for a death of any animal which shall result from castration or from disease or sickness contracted or injury suffered on the day of or prior to delivery of this policy to the assured; nor for a death resulting from the act of any officer or person who, claiming to act under and by virtue of any law or rule or regulation of any board of health or other legal authority, kills or causes to be killed any diseased, crippled or maimed animal, unless the assured shall have first obtained a written certificate from a reputable registered veterinary stating that by reason of such disease or injury the animal has been rendered worthless and useless, and shall immediately forward same to the company with the notice of loss; nor for a death where any officer, veterinary or person, directly or indirectly, kills an animal under the claim that such animal is afflicted with any dangerous communicable disease, unless the company be first notified and be given an opportunity to inspect the same; nor for a death in case the animal has been removed from the state or territory where kept when insurance was procured, except the company has first authorized such removal by its secretary indorsing on or attaching to this policy the company's consent to such removal.

7. There shall be no liability under this policy for the death of a stallion occurring from castration; nor for the death of a draft or grade stallion over the age of twelve (12) years; nor for the death of a stallion, other than draft or grade, over the age of fifteen (15) years.

8. No promise, statement, act or agreement by any agent or solicitor shall be binding on the insurer unless the same is in writing and attached to or indorsed on the application and incorporated in this policy. The express conditions precedent to the issuance of this policy are that the application for this insurance is the act of the assured; that each and all of the answers, descriptions, statements and representations in said application as they are written are made by the assured; that they are warranted by the assured to be true and shall not hereafter in any form be disputed or denied; that they were made by the assured exactly as shown in said application and constitute the act and deed of said assured, and that assured shall keep all the warranties, agreements and promises set forth in his application, as well as those contained in this policy.

9. In the acceptance of this policy it is expressly understood that it can only be renewed by the issuance of a new policy on a new application, such new policy to be issued only through the home office, and that no agent has authority to renew, extend or issue any other policy. The collection of any premium in advance of delivery of the policy is unauthorized.

10. This company shall not be liable, and the assured so understands and agrees, for any loss that may occur while any note, or part thereof, or order given for the premium, or any premium, or part thereof, due on this policy remains past due and unpaid, except that assured shall be entitled to such proportion of the total insurance as the amount actually paid in cash shall



bear to the total amount of the premium; and in case of default in payment at maturity of any note, or part thereof, or order given for the premium, or part thereof, the whole premium shall be deemed earned and shall at once become due and collectible. The company, however, shall not be liable for any loss under this policy resulting from sickness or disease contracted, or from accident, injury or other cause, or from death occurring during any period of such default, and the subsequent collection or receipt of such defaulted payment shall not be a waiver of this or any other provision or condition of this policy, nor operate to revive or create any liability hereunder.

11. Insurance payable hereunder on any animal is limited to and shall in no case exceed one-half of the actual cash value of such animal, and if there shall have been other insurance assented to, as above provided, the aggregate amount on each animal in this and all other companies shall not exceed one-half of its actual cash value. Should the insurance herein named be greater than one-half of the actual cash value of the animal at the time immediately preceding the last sickness or cause of death of the animal, as determined by appraisement made as heretofore provided, it is expressly agreed that the assured shall accept one-half of such value and the return of all excess premiums in full satisfaction of the company's liability, if any, for such animal under this policy. If the cash value as ascertained shall be less than the value of the animal as stated by assured in his application, the company's liability shall be only for such sum as shall bear the same ratio to the amount of insurance named in this policy on such animal as the ascertained cash value shall bear to the value so stated by the assured, but in no event for a greater amount than that named herein. When any animal insured by this policy shall be killed, under authority of law, because of any communicable disease, as heretofore provided, the insured shall make claim for allowance provided by law, and any allowance made or money paid to the assured for and on account of the destruction of such animal shall be deducted from the amount of this insurance on such animal, and this company shall be only liable for the residue. If other insurance be assented to, as heretofore provided, on any animal hereby insured, whether valid or invalid, this company shall be liable for no greater portion of the loss sustained than the sum hereby insured bears to the whole amount of insurance on such animal.

12. The right is reserved by this company to at any time cancel this policy, or any part thereof, by tendering to the assured by the hand of its agent or by postal money order sent by registered letter, postage prepaid, to the assured's address, as contained in the application, the unearned pro rata portion of the premium actually paid in cash. The assured may at any time surrender this policy for cancelation, the company to retain the short rate for the time the policy has been in force, provided the premium has been actually paid in cash, such short rate to be determined by the table printed on the reverse side of this policy.

13. There being claim by this company that loss was caused by any act or omission of any person, firm, or corporation giving rise to a cause of action, the party to whom the loss is payable under this policy shall, on receiving payment of this insurance, assign to this company such cause of action; and if in a compromise or settlement of such cause of action he shall have received any compensation in such settlement for the death of any animal

hereby insured, without first having obtained the written consent of the company's secretary so to do, this policy shall be void. It is furthermore expressly provided that all claims under this policy shall be void unless an action or suit thereon be brought within twelve (12) months next after the date such loss shall have occurred.

In witness whereof, the — live stock insurance company has caused these presents to be signed by its president and secretary at the city of —, —, this — day of —, 19—.

\_\_\_\_\_,  
Secretary.

\_\_\_\_\_,  
President.

Countersigned:

\_\_\_\_\_, Agent.

### JOINT ADVENTURE.

#### 5782. Contract of purchase between several parties.

Whereas — of —, state of —, and — of —, state of —, and — of —, state of —, desire to purchase the following described real estate: —.

Therefore, it is hereby mutually agreed by and between said parties that if one of such parties shall purchase said real estate, each of the other parties hereto will, upon demand, contribute his equal part of the purchase-price and his equal proportion of the charges and expenses of making said purchase, which purchase shall be for the joint and equal benefit of all the parties hereto. And it is hereby provided that the purchase-price of said real estate shall not exceed — dollars, or, if less than the whole tract is purchased, the purchase-price shall not exceed the proportion which such part bears to the whole tract, upon the basis of the purchase-price first above mentioned.

In witness whereof, etc.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

## LANDLORD AND TENANT.

### FORMAL PARTS, COVENANTS, AND PROVISOS OF LEASES.

#### 5785. Form of commencement.

Indenture made this — day of —, 19—, between — of —, the lessor, of the one part; and — of —, the lessee, of the other part, which expressions, lessor and lessee, shall include executors, administrators and assigns where the context so requires or admits. The said lessor doth hereby lease and demise unto the said lessee, etc.

1. See ante, title xi, chaps. 135, 136.

2. The lease should be dated on the day of its execution, and the presumption is that it is delivered and takes effect on that day. Care should be taken to name the day from which the term begins. Relative expressions as to time used in the body of the lease, such as next or last, refer to the date of the lease, and care should be taken to use them correctly.

#### 5786. Parcels.

(1) All that house or tenement situate in the city of —, in the county of —, and numbered — on — street, together with the yard, garden and outbuildings thereto belonging, now or late in the occupation of —, etc.

(2) All that parcel of land situate and being on the — side of — street, in the town of — and county of —, containing — acres, bounded and described as follows, namely, etc.: being the same premises conveyed to the said lessor by deed dated —, 19—, and recorded with — county deeds, book —, page —.

(3) All those two rooms or offices numbered respectively — and —, on the — floor of the building numbered — in — street, in the city of — and county of —, together with the fixtures and fittings specified in the schedule hereto annexed.

(4) Together with the exclusive use and enjoyment of a passageway of the width of — feet leading from the back part of said demised premises to — street aforesaid.

(5) Together with the right, in common with the lessor and the tenants or occupants of adjoining premises having the like right, to use the passageway on the — side of said premises leading to — street, the said lessee contributing a due proportion to the expenses of repairing and maintaining said passageway.

(6) Together with the right to free and uninterrupted access of light and air to the said demised premises from and over the land of the lessor situate on the — side of said premises.

(7) Together with all the rights, easements and appurtenances to the said premises belonging, or therewith usually held and enjoyed.

(8) Together, also, with the furniture and other effects in and about the same specified in the schedule hereto annexed.

#### **5787. Common reservations.**

(1) Excepting and reserving unto the lessor the use at all times and for all purposes, in common with the lessee, of the passageway leading from — street to the rear of said premises.

(2) Excepting and reserving unto the lessor all timber and trees now or hereafter standing or growing, upon any part of the said demised land, and all mines, minerals, and quarries in, upon or under the same, but without power for the lessor to cut down or remove any such timber or trees, or to dig for or work such mines, minerals or quarries, except with the lessee's written consent.

(3) Subject to the right which is hereby reserved to the lessor and his tenants at any time hereafter to rebuild or alter the adjacent buildings according to such plans, whether as to height, extent or otherwise, and in such manner as shall be approved by the lessor's surveyor.

(4) Excepting and reserving full right of passage over the street hereinbefore expressed to be demised, for the lessor, and for all other persons, and all carriages and animals, to and from all neighboring lands and houses belonging to the lessor.

(5) Excepting and reserving all the mines and minerals in and under the premises hereby leased, with power to the lessor to take all usual, necessary or convenient means for working,

taking out, preparing for market and taking away the said minerals; to make and repair shafts, tunnels and drains therefor; to lay pipes for conveying water to and from any manufactory or other building; and to do such other things upon said premises as may be necessary for the purpose aforesaid, paying, however, any reasonable compensation for all damages done to said lessee by such use of the premises.

(6) Saving and reserving to the party of the first part, forever, all streams, creeks and runs of water, and all mines, minerals, ores and metals of every nature and kind, upon or within the farm hereby demised, standing, being or to be found, with full and free ingress, egress, regress and power and liberty at all times to search, dig and carry away the same, or to manufacture the same thereupon, and to make and erect mills, dams and other buildings therefor, and also to take and use all such timber, firewood, stone and other materials as may be found in any part of the said demised farm, proper and necessary for his or their use. But it is hereby provided that for so much of the said demised farm as shall by these means become encumbered, or rendered useless to the lessee, there shall be deducted out of the yearly rents herein reserved a reasonable abatement, in proportion to the whole quantity of the said hereby demised farm, during the time that any part may be so encumbered or rendered useless.

1. See ante, vol. 5, § 4529.

#### 5788. Habenda.

(1) To hold the premises hereby demised unto the lessee from the — day of —, 19— (or from the day of the date of these presents, or from the — day of — now last past), for the term of — years.

(2) To hold the premises hereby demised unto the lessees, as joint tenants, as part of their copartnership estate, from, etc.

1. See ante, vol. 5, § 4527.

#### 5789. Reddenda.

(1) Yielding and paying therefor during the said term the yearly rent of — dollars, and so in proportion for any less

time than a year, by two equal half-yearly payments on the — day of — and the — day of — in every year; the first of such half-yearly payments to be made on the — day of —, 19—, and the last half-yearly payment to be made in advance on the — day of — next immediately preceding the expiration of the said term.

(2) Yielding and paying, etc., by equal quarterly payments on the — day of —, etc. (or on the four usual quarter days), in every year, the first of such payments to be made on the — day of — next.

1. Words, or a clause to this effect, are essential to enable the landlord to collect rent for a part of the period between two rent days. The words in this form are used in place of a special or more formal provision, such as the following:

And yielding and paying in the event of, and immediately upon, the said term being determined by re-entry under the proviso hereinafter contained, a proportionate part of the said rent for the fraction of the current half-year (or quarter) up to the day of such re-entry.

#### **5790. Rent in advance.**

Yielding and paying, etc., the yearly rent of — dollars, to be paid in advance by four equal quarterly payments, the first of such payments for the quarter ending on the — day of — next, to be made on the execution of these presents, and the subsequent payments to be made in advance for each quarter on the — day of —, the — day of —, and the — day of —, in every year.

#### **5791. Term from month to month or week to week.**

From the — day of —, 19—, from month to month (or from week to week), until one of the parties hereto shall give to the other one month's (or one week's) written notice to quit, such notice to expire on the — day of any month (or on any Saturday); at the rent of — dollars for every calendar month (or week), to be paid at the end of every such month (or payable on the — day of every month, or to be paid on Saturday in each week) during the tenancy.

1. See ante, vol. 5, § 4586.

#### **5792. Express lien clause.**

The said lessor shall have a lien for the payment of the rent aforesaid upon all the goods, wares, chattels, implements, fix-

tures, tools and other personal property of the said lessee which are or may be put on the said demised premises, and such lien may be enforced on the nonpayment of any of the rent aforesaid, by the taking and sale of such property in the same manner as in the case of chattel mortgages on default thereof; said sale to be made upon six days' notice, posted upon the demised premises, and served upon the party lessee, or left at said premises, or at his place of residence.

### LESSEE'S COVENANTS.

#### **5793. To pay rent.**

And the lessee doth hereby for himself covenant with the lessor that he will, during said term, pay the said rent at the times and in the manner aforesaid.

1. See ante, vol. 5, ch. 136.

#### **5794. To pay taxes and water rates.**

And also will, from time to time, pay all taxes, water rates and assessments of every description which may be payable either by landlord or tenant in respect of said premises.

#### **5795. To keep in repair.**

And also will, during said term, keep and maintain the said premises and all fixtures and additions thereto in good and substantial repair and condition.

1. See ante, vol. 5, § 4565.

#### **5796. Not to make any alterations or additions.**

And also will not, at any time during the said term, without the lessor's written license first obtained, erect any new building thereon, or make any alteration or addition whatsoever in or to the buildings now on said premises, either externally or internally.

1. A proviso may be made as to any contemplated changes or alterations, as for instance:

Provided that it shall be lawful for the lessee to remove or dispose of any of the engines, machinery, buildings, erections or other things thereon, for the purpose of replacing or renewing the same.

2. See ante, vol. 5, § 4561.

**5797. To submit plan of alterations.**

That he and they will not make or suffer any alterations or additions in the demised premises without first having submitted the plan or a sufficient specification thereof to — of —, or in case of his decease, absence or inability to act, to some skilled architect or mechanic named by the lessors or those having their estate, and having obtained his written opinion that the intended alterations or additions will not impair the strength or durability of the buildings, the services of said — or other person to be paid for by the lessees.

**5798. To obtain approval before making alterations.**

And also before making any alterations in any of the buildings on said premises the lessee will obtain the lessor's written approval to the plans and specifications of such intended alterations, and will make the same in such manner as shall be so approved.

**5799. To expend certain sum in improvements.**

That he, the said lessee or his representatives or assigns will, within the first six months of the term hereby granted, lay out and expend the sum of — dollars at least in substantial alterations, of a nature to improve the demised premises generally as a place of business, to be made in a workmanlike manner; the application of said sum to be from time to time inspected and approved by such proper persons as the lessors or those having their estate shall appoint to inspect the same; and also will when required render to the lessors or those having their estate an account and vouchers of said expenditures.

**5800. Not to use premises for trade.**

And also will not use the said premises, or permit the same to be used, for the purposes of any business, trade or manufacture of any description, or for any school or teaching of music, or for lodgings or for a boarding-house.

1. See ante, vol. 5, § 4562.

**5801. To use as private dwelling-house only.**

And also will use and occupy said premises as a private dwelling-house only and for no other purpose.



**5802. To use as offices only.**

And also will not use or occupy the said premises, or permit the same to be used or occupied, otherwise than as offices, or for any purpose or in any manner inconsistent with such occupation, nor so as to be a damage or annoyance to the occupants of other offices in the same building.

**5803. Not to carry on offensive trade.**

And also will not carry on or permit upon the said premises any offensive, noisy or dangerous trade, business, manufacture or occupation, or any nuisance, nor use, nor allow the same to be used, for any illegal or immoral purpose, but will use the same as a private dwelling-house, or for carrying on handicrafts or occupations of a quiet and inoffensive nature only.

**5804. Not to assign or underlet without license.**

Will not, without the lessor's previous written license, assign, underlet or part with the possession of the said premises or any part thereof.

1. See ante, vol. 5, § 4575.

**5805. To consume hay, etc., on premises.**

And also will consume all the hay, straw, fodder, turnips and other root crops on the premises, and will in every year carry out and spread at proper times and in a husband-like manner, on the demised premises, all manure, muck and compost produced or prepared on said premises.

**5806. To keep farm in good condition.**

And will keep the said farmhouse and buildings, and all things in and about the same, and all fences, ditches, drains, fixtures and things upon or about the said farm and lands in good condition and complete repair, without any alteration except such as the lessor shall approve of.

**5807. To cultivate farm properly.**

And will cultivate, manure and manage the said farm and lands in a fair and proper manner, according to the most approved

course of husbandry, and will not convert into arable land any land now in pasture or meadow, without the lessor's consent.

**5808. To manage hotel properly.**

And will during the said term personally reside in said hotel and keep it open in due and proper course of business as a public house, and neither use nor suffer the same to be used for any other purpose, and will use his best endeavors to preserve and extend the trade thereof; and will conduct and manage the same in a proper and orderly manner, and will not do, or suffer anything to be done, to the detriment of said house.

**5809. To permit lessor to enter.**

And also will permit the lessor, his heirs or assigns, and his or their agents, to enter at all reasonable times to view the state and condition of the said premises.

**5810. To permit lessor to put up notice for reletting.**

And also that it shall be lawful for the lessor, his heirs or assigns, or his or their agents, at any time within — calendar months before the expiration or sooner determination of the said term, to enter upon the said premises, and to affix upon any suitable part thereof a notice for reletting the same, and that the lessee will not remove the same, and will permit all persons having written authority therefor to view the said premises at all seasonable hours.

**5811. Not to do anything to increase rate of insurance.**

And also will not carry on or permit upon the said premises any trade or occupation, or suffer to be done any other thing, which may render any increased or extra premium payable for the insurance of the said premises against fire, or which may make void or voidable any policy for such insurance.

**5812. To deliver up premises at end of term.**

And will at the expiration, or sooner determination, of the said term, deliver up to the lessor the said premises, and all new fixtures and additions thereto, in such good and substantial re-

pair and condition as aforesaid, and in such state and condition as shall be consistent with the due performance of the several covenants hereinbefore contained.

1. If furniture was included in the lease, add:  
including the said furniture and effects specified in the schedule hereunto annexed or substituted for the same under the covenants hereinbefore contained.

### LESSOR'S COVENANTS.

#### **5813. For quiet enjoyment.**

(1) And the lessor doth hereby for himself, his heirs, administrators, executors and assigns, covenant with the lessee, his executors, administrators and assigns, etc.

(2) That he and they, paying the rent hereby reserved, and performing and observing the several covenants by the lessee hereinbefore contained, may peaceably hold and enjoy the said premises during the said term without any interruption by him or them, or any person lawfully claiming through him, them or any of them.

1. See ante, vol. 5, ch. 136.

2. See ante, vol. 5, §§ 4559, 4560.

#### **5814. To rebuild in case of fire.**

And also in case the said premises shall, at any time during the said term, be destroyed or injured by an accidental fire, the said lessor shall and will forthwith, as soon as conveniently may be thereafter, proceed to rebuild and repair and put the same in as good condition as the said premises were in before such fire, and in the meantime, and until said premises are rebuilt and put in good and tenantable order, the rent hereby reserved shall cease.

#### **5815. To rebuild farm buildings burnt down.**

And also that if the farmhouse, buildings and barns, for the time being standing on any of the demised premises, shall at any time during the said term be destroyed or damaged by fire, except by the wilful neglect or default of the lessee, or his servants or workmen, then and whenever the same shall happen, and within — calendar months thereafter, the lessor will at his own cost sufficiently rebuild, restore and repair the premises which shall be so destroyed or damaged.

**5816. For keeping entire premises in repair.**

And will, at his own cost and expense, put and keep the buildings, both inside and outside, on said demised premises in good tenantable order and repair during the whole of the term hereby demised.

1. See ante, vol. 5, § 4565.

**5817. For repairing outside of premises.**

And also will at all times during the said term keep the outer walls, roof and outside of said buildings in proper and substantial repair.

**5818. For repairing building used for offices.**

And also will at all times during the said term keep the main walls, roof, drains and exterior of the said building and premises, and the staircase, passages, water-closets and lavatories, and such other internal parts thereof as shall from time to time be used by the lessee, in common with the owners or occupiers of the other rooms or offices in the said building, in good and substantial repair, and in clean and proper order and condition.

**5819. For renewal of lease.**

And that if the lessee, his executors, administrators or assigns shall be desirous of taking a renewal lease of the said premises for the further term of —— years from the expiration of the said term hereby granted, and of such desire shall, prior to the expiration of the said last-mentioned term, give to the lessors —— months' previous written notice, and shall pay the said rent hereby reserved, and observe and perform the several covenants and agreements herein contained, and to be observed and performed up to the expiration of the said term hereby granted, the lessors will, upon the request and at the expense of the lessee (and upon payment of the sum of —— dollars as a premium for such renewal), forthwith execute and deliver to the lessee a renewed lease of the said premises for the further term of —— years, at the same yearly rent, and under and subject to the same covenants, provisos and agreements, as are herein contained, other than this present covenant.

1. See ante, vol. 5, § 4557.

## COVENANTS SUBSEQUENT TO ORIGINAL LEASE.

**5820. By under-lessor to pay rent under original lease.**

And further that the lessor will, during the said term hereby granted, duly pay the said yearly rent of — dollars, hereinbefore reserved; and will at all times keep the tenant, his executors, administrators and assigns, estate and effects, indemnified against all actions, expenses, claims and demands, on account of the non-payment of any part of said rent.

1. See ante, vol. 5, ch. 137.

**5821. Covenants by assignor of lease.**

The assignor hereby covenants with the assignee that, notwithstanding any act, deed or thing by the assignor done, or knowingly suffered, the said indenture of lease is now a valid lease, and has not become void or voidable; and that the rent, covenants and conditions therein reserved and contained have, on the lessee's part, been duly paid, observed and performed up to the date hereof; and that, notwithstanding anything by the assignor done or suffered, he has power to assign the premises unto the assignee for the residue of the said term in manner aforesaid; and that the same premises at all times hereafter during the said terms may be entered into and held, and the rents and profits thereof received accordingly, without any lawful interruption by the assignor, or any person or persons rightfully claiming through or in trust for him, free from all encumbrances, claims and demands created or occasioned by the assignor, or by any person or persons rightfully claiming as aforesaid, except the rent, covenants and conditions therein and thereby reserved and contained, and which on the tenant's or lessee's part are or ought to be paid, observed and performed; and further that the assignor, his executors and administrators, and every other person or persons rightfully claiming as aforesaid any estate, right, title or interest in, to or out of the premises, will at all times during the said term, at the request and expense of the assignee, his executors, administrators and assigns, execute and do every such lawful assurance and thing for further assuring the said premises unto the assignee, his executors, administrators and assigns, for the re-

mainder then unexpired of the said term, as by him, them or any of them shall be reasonably required.

**5822. Covenants by assignee of lease.**

And the assignee covenants for himself, his executors, administrators and assigns that he and they will, during the residue of the said term, pay the said yearly sum of — dollars, as the same becomes due, and observe and perform the covenants, provisos and conditions in the same indenture contained, and which, by or on the part of the lessee, are henceforth to be observed and performed; and also will at all times hereafter, at his or their own costs, defend, save harmless and keep indemnified the said assignor, his heirs, executors and administrators, against all payments, costs, losses, damages and expenses whatsoever, which he or they shall or may make, pay, sustain or be liable to, on account of all or any of the said yearly rent which shall henceforth become due and payable, and on account of the breach, nonperformance or nonobservance, by or on the part of him or them, of all and every or any of the covenants, provisos and conditions contained in the said indenture of lease, to be observed and performed by the lessee, and also against all actions and suits at law, or in equity, which shall be commenced or prosecuted against the said assignor, his executors or administrators, for or on account of the said rent, covenants, provisos and conditions, or any of them, and henceforth to be paid, observed and performed.

PROVISOS.

**5823. For re-entry.**

Provided always, that if any of the rent hereby reserved shall be in arrear, or in event of any breach of any of the covenants and agreements on the part of the tenant herein contained, it shall be lawful for the landlord to re-enter upon the said demised premises.

1. See ante, vol. 5, ch. 137.

**5824. Proviso qualifying right of re-entry.**

Provided, nevertheless, that no breach of the covenants hereinbefore contained, except that for the payment of rent, or that for

insurance against fire, shall give to the lessor, his heirs or assigns, any right of re-entry under the proviso therefor, unless or until judgment shall have been obtained in an action for such breach of covenant.

**5825. For suspension of rent in case of fire.**

Provided that in case any part of the said buildings or premises shall at any time be destroyed or so damaged by fire (or other unavoidable casualty) as to be unfit for occupation or use, then the rents hereby reserved, or a fair and just proportion thereof, according to the nature and extent of the damage sustained, shall, until the said premises shall have been rebuilt or reinstated and made fit for occupation or use, be suspended and cease to be payable; or these presents shall, at the election of said lessor, his heirs or assigns, thereby be determined and ended.

**5826. In case buildings are substantially destroyed, the lease to be determined at election of either party.**

Provided that in case the said buildings shall be substantially destroyed, then at the election of the lessor or those having his estate, or of the lessee, his representatives or assigns, upon a written notice thereof to be given within thirty days after such destruction, the estate hereby created shall thereupon be determined.

**5827. For determining lease by lessee.**

Provided, always, that if the lessee shall be desirous of determining this present lease at the expiration of the first — years of the term hereby granted, and of such his desire shall give — calendar months' previous written notice to the lessor, and shall pay and discharge all the rents, and perform and observe all the covenants hereinbefore contained, and on his part to be performed and observed up to such determination, then and in such case immediately after the expiration of the said term of — years, this present lease and everything herein contained shall cease and be void.

**5828. For determining lease by lessor.**

Provided, always, that if the lessor shall be desirous of determining this present lease at the expiration of the first —

years of the term hereby granted, and of such his desire shall give — calendar months' previous written notice to the lessee, or shall leave the same for him on any part of the demised premises, then and in such case, immediately after the expiration of the said term of — years, this present lease and everything herein contained shall cease and be void, without prejudice to any claim by either party against the other in respect of any antecedent breach of any covenant or condition herein contained.

**5829. For determining lease by either party.**

Provided, always, that said tenancy shall be determinable at the end of — years by either party, on his giving to the other party — calendar months' previous written notice of his desire to determine the same.

**5830. For purchase of fixtures by lessor at end of lease.**

Provided also, that the lessor, his heirs or assigns, shall be entitled, on giving written notice of his intention in that behalf to the lessee, his executors, administrators or assigns, at least one calendar month before the determination of this lease, or within one week after the determination thereof by re-entry, to purchase from the lessee, his executors, administrators or assigns any additional fixtures, machinery or effects which may during this lease be put up or erected in or upon said premises by him or them, at a valuation.

**5831. For purchase of premises by lessee.**

Provided always, that if the lessee, his executors, administrators or assigns shall, before the — day of —, give to the lessor, his heirs or assigns, — calendar months' notice of his desire to purchase the fee simple of said premises hereby demised, then the lessor, his heirs or assigns shall, on the expiration of such notice, and upon payment by the lessee of the sum of — dollars, and of all rent accrued to that time, convey the said premises unto the lessee, his executors, administrators or assigns, or to such person or persons as he or they shall direct, in fee simple, free from encumbrances.



**5832. To enable under-lessee to pay his rent to original lessor or owner.**

Provided always, and it is hereby agreed, that the said (under-lessee), his executors or administrators shall pay the original rent reserved to the said (original lessor or owner), his heirs or assigns, within ten days next after the same shall have become due quarterly; but in case he shall neglect or refuse so to do, then it shall be lawful for the said (under-lessee), his executors, administrators or assigns to pay the same unto the said (original lessor or owner), his heirs or assigns, by and out of the rent hereby reserved, if he or they shall accept thereof; and that his or their receipts shall be good and effectual discharges for so much of the rents for which such receipts shall be given.

**5833. Arbitration clause.**

If and whenever any dispute or question shall arise between the lessor and lessee touching these presents, or anything herein contained, or the construction hereof, or the rights, duties and liabilities of either party in relation to the premises, the matter in difference shall be referred to two arbitrators, one to be appointed by each party, or to an umpire to be appointed by the arbitrators in the usual way, and the decision or award of the said arbitrators or umpire shall be final and binding on the parties hereto, and their respective heirs, executors, administrators and assigns.

1. See ARBITRATION, 5190 et seq.

**5834. Interpretation clause.**

The word "lessor," wherever used in the foregoing instrument, shall include his heirs and assigns, and the word "lessee," in the same, shall include his executors, administrators and assigns.

**PRECEDENTS OF LEASES.****5835. Agreement to lease.**

Agreement made this — day of —, 19—, between — of — (intended lessor), of the one part, and — of — (intended lessee), of the other part.

Witnesseth, that the said — agrees to grant, and the said — agrees to take, a lease of all that, etc., for the term of — years from the — day of —, 19—, at the yearly rent of — dollars, payable quarterly on the usual quarter-days in each and every year, the first of such quarterly payments to be made on the — day of —, 19—.

The lease shall contain the following covenants by the lessee: to pay the said rent on the days — and in manner aforesaid, and all taxes, rates and assessments whatsoever; to keep the said premises with the fixtures and appurtenances in good repair, damage by fire excepted; to yield up the said premises with the fixtures and appurtenances in good repair at the end of the said term, fair wear and tear and damage by fire excepted; not to carry on any noisome, dangerous or offensive trade thereon, and not to assign or underlet the said premises without the consent of the landlord.

The lease shall also contain a power for the landlord to enter and view state of repair; a covenant by the tenant to repair within three calendar months after notice; and a proviso for re-entry by the landlord on breach of covenants, or nonpayment of rent for — days, whether formally demanded or not.

And also covenants by the landlord to insure and keep insured the said premises to three-fourths of the value, and to rebuild within — months in case of fire, otherwise the rent to be suspended; and for quiet enjoyment by the tenant till default; and all other usual and proper covenants.

And it is hereby agreed that these presents shall operate as an agreement only, and not as an actual demise.

In witness, etc.

1. See ante, vol. 5, § 4550.

### **5836. Agreement for lease to be granted on expiration of present lease.**

Agreement made this — day of — between —, hereinafter called the landlord, and —, hereinafter called the tenant.

Whereas the landlord is the owner of the premises hereinafter described subject to lease now existing between said parties, which will expire on the — day —:

And whereas the tenant is desirous of taking a lease of said premises from the expiration of the existing lease, upon the condition that the tenant shall make the repairs and alterations in the premises hereinafter specified:

It is agreed that the landlord shall grant and the tenant shall accept a lease of the dwelling-house and premises on — street, in the city of —, for the term of — years from the day after the expiration of the existing lease, at the yearly rent of — dollars, payable in equal quarterly payments on the usual quarter-days, the first payment to be made on the — day of — next;

The tenant shall make such repairs and alterations described in the memorandum hereto annexed, within — calendar months after the commencement of the new term to the satisfaction of the landlord. The execution of the proposed lease for the new term is conditional upon the making of said repairs and alterations, and if the same are not made within the time hereinafter limited the landlord shall be entitled to re-enter upon the premises, and all interest of the tenant therein shall determine. The covenants and provisions of said intended lease shall be the same, excepting the rent, as in the existing lease.

In witness, etc.

(Signatures of both parties.)

### 5837. Agreement to let furnished apartments.

Agreement, etc. (Parties as in last precedent.)

The said lessor agrees to let, and the said lessee to take, the — rooms on the — floor of the dwelling-house situate at —, in the county of —; and also the furniture, articles and effects now being in the said rooms respectively; and also the other articles and things specified in the schedule hereunder written, for the term of — years from the — day of —, 19—, at the yearly rent of — dollars, payable quarterly. And the said lessee hereby agrees to keep and preserve the said furniture and effects, so far as reasonable wear will permit, in a proper state and condition, and supply and replace any articles that may be destroyed, broken or lost by articles of a like kind and of equal value; and on the expiration or sooner determination of the said term to deliver up to the said lessor the said rooms, furniture

and effects, or such articles as shall be so substituted in the place of any of the said articles as shall have been so destroyed or broken as aforesaid.

Witness the hands of the said parties.

**5838. Agreement for a building lease for ninety-nine years.**

An agreement made the — day of —, 19—, between — of —, who and his heirs and assigns, unless the contrary appears, are hereinafter called the lessor, of the one part; and — of —, who and his executors, administrators and assigns, unless the contrary appears, are hereinafter called the lessee, of the other part, whereby it is agreed as follows:

When and so soon as the lessee shall have erected, built and finished the buildings mentioned in the fifth clause of this agreement, the lessor will grant to the lessee a lease of all that piece or parcel of land situate, etc., and the real estate and buildings to be erected thereon, with the appurtenances, which premises are delineated in the plan annexed to this agreement, from the — day of —, 19—, for the term of ninety-nine years, at the yearly rent of — dollars for the first year of the said term, and the yearly rent of — dollars during the residue thereof, payable quarterly on the — day of —, the — day of —, the — day of — and the — day of —, free and clear of all and every rate, tax, charge, duty, assessment or imposition whatsoever, to which the landlord, tenant or premises is or are, or hereafter shall or may be, liable; the first quarterly payment of the said yearly rent of — dollars to be made on the — day of —, 19—.

(Set out briefly the covenants, terms, conditions and provisos of the intended lease.)

The lessee will accept such lease on the terms and conditions aforesaid, and execute a counterpart thereof when required, and pay the charges of and incidental to the preparation and execution of the same, as well as the charges of and incidental to these presents, and a duplicate hereof.

Until such lease shall be granted, the lessee will pay the rents agreed to be thereby reserved, and all such rates, taxes and assessments as hereinbefore mentioned, and will, as far as circum-

stances will admit, observe and perform the covenants and conditions to be contained in the said lease, as if the same had been actually granted, and the lessor shall have all such remedies for recovering rent, and for breach of any covenant, as if the said lease had actually been granted.

The lessee will, on or before the —— day of —— next, at his own costs and charges, pull down and remove the buildings now standing and being on the said piece of ground, and on the site thereof, in a good, sound, substantial and workmanlike manner, and with fit and proper materials of all kinds, to be approved by the architect or surveyor of the lessor, and under the direction and inspection of such architect or surveyor and to his satisfaction, erect, build and complete, and in a workmanlike manner finish, a good and substantial brick building fit for use as a ——, and in all things conformable and agreeable to the specification thereof hereunder written; and will lay out and expend thereon the sum of —— dollars and upward; and also will bear, pay and discharge the said architect's or surveyor's fees of five per cent. on the expenditure, for superintending and directing the same.

The lessor or his architect, surveyor or agent may at all reasonable times during the continuance of this agreement enter upon the said premises to view the state and progress of the work and building operations hereby agreed or authorized to be executed and carried out.

The lessee shall be entitled to take for his own absolute use and benefit all materials of the said buildings so to be pulled down and removed as aforesaid.

The lessee shall not assign, or sublet, or otherwise part with, the benefit of this agreement, except with the lessor's written consent first had and obtained.

In case the lessee shall not erect, build, complete and cover in, and in all respects finish and make fit for use, such building as aforesaid to the satisfaction of the lessor's architect or surveyor on or before the said —— day of ——, 19—— (in which respect time shall be of the essence of the contract), or if the said yearly rent of —— dollars shall be in arrear for the space of —— days after the same shall have become due (whether payment thereof

shall have been formally or legally demanded or not), or in case of breach of any of the stipulations herein contained, or if the lessee shall not proceed with the work with proper diligence, then and in any such case it shall be lawful for the lessor, if he shall think fit, to re-enter and take possession of the premises hereby agreed to be demised, and of all buildings, erections, plant, and materials which may be thereon, without making to the lessee any allowance or compensation in respect thereof.

This agreement shall not, nor shall anything herein contained or to be done in pursuance hereof, except the granting of a lease as aforesaid, operate as an actual or present demise of the premises, or any part thereof, or to create any leasehold interest therein or tenancy thereof; but the lessee shall only have a right to enter upon the premises for the purposes of performing this agreement.

Any rents or yearly sums hereby agreed to be paid by the lessor, which shall be in arrear, shall be recoverable by the lessor as if the same were rent in arrear, and the lessee were the tenant of the premises.

In witness, etc.

**5839. Agreement for a lease of land on which the lessee is to erect a building.**

This agreement, made this — day or —, 19—, between — of the city of —, state of —, first party, and — of said city of —, second party.

Witnesseth as follows: The first party hereby agrees to execute to the second party a lease of the parcel of land known and described as follows, etc. Said lease is to be of the form, language and terms contained in the copy of an unexecuted lease hereto annexed, and the second party is to have the right to the possession of said land hereunder until the — day of —, 19—.

Provided and on condition that the second party shall erect and build a building upon said land of the following description and value, namely, etc., before the said — day of —, 19—. Provided also, and on condition, that said building, at the time of executing said lease, shall be in existence on said land, in good repair, and not encumbered by way of mortgage lien or otherwise, and shall be the sole property of the first party after the termina-

tion of said lease. Provided also, and on condition, that the party of the second part keep and perform all his covenants and agreements herein contained.

And the said second party hereby covenants and agrees to pay to the first party for the use of said land, the sum of —— dollars on the first day of each month in advance, until said lease shall be executed, and will also pay and discharge at his own cost when due all taxes, assessments, rates, charges and impositions, both ordinary and extraordinary, which shall be imposed upon said land or premises during the existence of this contract.

It is also mutually agreed that this contract shall not be assigned without the written permission of the first party, and if it shall be assigned without the written permission aforesaid, or if any of the covenants of this contract shall be broken, the first party shall have power to re-enter and repossess said land and premises without notice to the second party, notice being hereby expressly waived, and to declare and thereby render this contract null and void.

In witness, etc.

#### **5840. Lease with short covenants.**

This deed of lease, made this —— day of ——, in the year 19—, between —— of ——, of the one part, and —— of ——, of the other part, witnesseth, that the said first party demises unto the said second party, his personal representatives and assigns, all that dwelling-house and land situate, etc., from the —— day of ——, 19—, for the term of —— years from thence next ensuing, and to expire on the —— day of ——, 19—, yielding therefor during the said term the rent of —— dollars yearly, payable in equal quarterly payments on the first days of January, April, July and October in each year, the first instalment to become due on the —— day of —— next.

The said lessor covenants for the lessee the quiet enjoyment of said term, and that if the said buildings shall be so injured by fire as to render them untenable, this lease shall be determined.

The said lessee covenants to pay the rent in the manner above stated; that he will not assign without leave; that he will leave the premises in good repair, necessary wear and tear excepted; that

the premises shall not be used during the said term for any other purpose or purposes than those above specified; that he will pay all bills for gas used upon the premises during the said term; that at the expiration hereof, namely, on the — day of —, 19—, without notice to him, he will deliver to said lessor, his agents or assigns, quiet and peaceable possession of the said premises, and that the lessor may re-enter for default of — days in the payment of any instalment of rent, or for the breach of any covenant herein contained.

Witness the following signatures and seals.

1. See ante, vol. 5, §§ 4555-4566.

**5841. Lease with provision for liquidated damages for breach of covenant not to assign or underlet.**

This instrument, made this — day of —, 19—, between — of —, first party, and — of —, second party,

Witnesseth, that the first party hereby demises and lets to the second party and the second party hereby hires and takes from the first party, all that dwelling-house situate, etc., for the term of — years, to commence on the — day of —, 19—, at the yearly rent of — dollars, payable quarterly on the first days of January, April, July and October in each year.

The second party hereby covenants to and with the first party that he will make punctual payment thereof as aforesaid, and will quit and surrender the premises at the expiration of said term in as good state and condition as they are now in, reasonable use and wear thereof and damages by the elements excepted; and will not use or occupy said premises for any business or purpose deemed extra hazardous on account of fire; and will not assign this lease, or underlet any part of the said premises to any person whomsoever, without first obtaining the first party's written consent; and in case of not complying with this covenant, the second party agrees to forfeit and pay to the first party the sum of — dollars, which are hereby liquidated and fixed as damages and not as a penalty.

This lease is made and accepted on this express condition, that in case the second party should assign this lease, or underlet any part of the said premises without the first party's written con-



sent, that then the first party, his heirs or assigns, in his option, shall have the power and the right of terminating and ending this lease immediately, and be entitled to the immediate possession of said premises, and to take summary proceedings against the second party, or any person or persons in possession as tenant, having had due and legal notice to quit and surrender the premises, holding over their term.

In case said premises should be destroyed by fire before or during said term, then this lease is to cease and determine; the rent to be paid up to that time.

In witness, etc.

1. See ante, vol. 5, § 4575.

**5842. Lease from year to year.**

Indenture made this — day of —, 19—, by and between — of —, hereinafter called the lessor, and — of —, hereinafter called the lessee. The lessor hereby demises and lets unto the lessee (here insert description), together with all the rights, easements and appurtenances thereto belonging, or usually held or enjoyed therewith.

To have and to hold for the term of one year from the — day of —, 19—, and so on from year to year, until this lease shall be determined at the end of the first or any subsequent year, by either party giving the other three calendar months' previous written notice; yielding and paying the yearly rent of — dollars, in equal quarterly payments, on the — day of —, etc., the first quarterly payment to be made on the — day of — next, and the last to be made in advance one calendar month before the expiration of the lease. The lessee covenants with the lessor:

To pay the said rent and in the manner aforesaid.

To pay all taxes, rates and assessments, of every description, for the time being, payable in respect of said premises.

To keep the said premises in good and tenantable repair, reasonable wear and tear excepted.

To permit the lessor and his agents to enter at all reasonable times to view the condition of said premises.

Not to suffer or commit any strip or waste in the premises.

Not to make any alterations or additions in the same during said term without the lessor's written consent first obtained.

And at the expiration or sooner determination of this lease to deliver up said premises in as good condition as the same now are.

Provided always, and these presents are upon condition, that if any part of said rent shall be in arrear, whether formally demanded or not, or if there shall be any breach by the lessee of any of his agreements or covenants, the lessor may re-enter upon any part of said premises in name of the whole, and thereupon this lease shall determine.

And provided also that, in case the buildings on said premises, or any part thereof, shall, during said term, be destroyed or damaged by fire, or other unavoidable casualty, so that the same shall be unfit for use, then said rent or a proportionate part thereof shall be abated until said premises shall have been put in proper repair by the lessor, or this lease shall be determined at his election.

The lessor agrees with the lessee that he, paying the rent and performing and observing the agreements hereinbefore contained, may peaceably hold the said premises during said term, without any interruption by the lessor or any person claiming under him.

In witness, etc.

1. See ante, vol. 5, § 4583.

#### **5843. Lease of a residential flat or suite of chambers.**

Indenture made the —— day of ——, 19——, between —— of ——, the lessor, of the one part, and —— of ——, the lessee, of the other part: The lessor hereby demises unto the lessee all that suite of apartments, consisting of —— rooms, known or intended to be known as the —— suite of apartments, on the —— floor of the building numbered —— on —— street, in the city of ——, in the county of ——: To hold unto the lessee, for the term of —— years, from the —— day of ——, 19——, yielding the yearly rent of —— dollars, and so in proportion for any less period than a year, by equal quarterly payments on the usual quarter days in every year, the first of such payments to be made on the —— day of ——, 19——.

The lessee hereby covenants with the lessor that he, the lessee,

will pay the said rent as aforesaid, and will pay the — gas company all charges for gas consumed on the premises, according to the meter placed or to be placed therein by the said gas company; and also will not use or permit the premises to be used for any illegal or improper purpose; nor exhibit any placard on any part thereof; nor hang, nor allow to be hung, any clothes or other articles on the outside of the premises; nor make nor permit to be made any disturbance, noise or annoyance whatsoever, detrimental to the premises, or to the comfort of the other inhabitants of the said building; nor do, nor permit to be done, any act or thing which may be, or grow to the annoyance, damage, scandal or disturbance of the lessor or his tenants, or the occupiers of any adjoining premises; nor convert the premises, or any part thereof, into nor use the same as a shop or warehouse, or suffer any trade to be carried on therein, but will use the same as a private residence only; and will not commit or permit waste of any water on the premises; and will not allow any person or persons or children under his control to loiter or play in the passages, landings, or stairs of the said buildings, nor soil the same by the carrying of coal or other articles, and shall not use the same in any way except for the purposes of ingress or egress; and will not assign or underlet the premises, or any part thereof, without the lessor's written consent, such consent not be unreasonably withheld; and will keep the interior of the premises, and also the doors and windows thereof, and the fixtures therein, and all interior walls, pipes and other appurtenances, in good, substantial and tenantable repair, and in clean condition (damage by fire excepted); and also will permit the lessor, or his agents, and his or their respective architects, agents, surveyors and workmen, at all reasonable hours, to enter into the premises to view the condition thereof, and to give or leave written notice upon the premises, for the lessee, of all defects and wants of repair there found; and also will, within — calendar months after every such notice, well and sufficiently repair and make good such defects and wants of repair, whereof notice shall have been so given or left; and also will permit the lessor and his agents or workmen to do all such repairs as the lessor may be liable to do upon the

premises, or in or upon premises adjoining the same; and also will not during the said term cut or weaken any of the principal timbers or walls of the premises, or any part thereof, or make or permit to be made any addition to the premises, or any alteration in the architectural decoration thereof, without the lessor's written license; and will at the end of the said term peaceably and quietly deliver up possession of the premises unto the lessor in good state and condition (damage by fire excepted), together with the venetian blinds and landlord's fixtures, now or at any time during the said term to be fixed or fastened to the premises, or any part thereof, and all improvements and additions thereto.

The lessor hereby covenants with the lessee that the lessee, performing and observing all the covenants by the lessee herein contained, may quietly hold and enjoy the premises during the said term without any interruption by the lessor, or any person claiming through him; and further, that he, the lessor, will pay all rates and taxes that now are, or that hereafter may be, imposed upon the premises, including the water rate but excluding the gas rate, and that he will keep the exterior of the premises in good and substantial repair.

Provided always that, on any breach of any of the covenants by the lessee herein contained, the lessor may re-enter upon the premises, and immediately thereupon the said term shall absolutely determine. Provided also that if the premises, or any part thereof, shall at any time during the said term be destroyed or rendered uninhabitable by fire (except through the wilful neglect of the lessee), then and in such case the payment of the rent hereby reserved, or a proportionate part thereof, according to the extent of the damage incurred, shall be suspended until the premises shall have been reinstated and again rendered fit for habitation. Provided lastly, that the lessor and the lessee, and the executors, administrators and assigns of the lessor and of the lessee shall be respectively bound by and be entitled to the benefit of these presents, and to the covenants, conditions and agreements therein contained, in like manner as if the word "executors, administrators and assigns" were inserted next after the

words "lessor" and "lessee" throughout, so far as the nature of the case will admit, and unless the context may require a different construction.

In witness, etc.

**5844. Lease of business block for a long term, with special provisions for rebuilding in case of destruction by fire, and for an increased rent for new building.**

Indenture made the —— day of ——, 19——, by and between —— of ——, first party, the lessor, and —— and ——, both of ——, the second parties, the lessees.

The first party demises and leases unto the second party the following described parcel of land, with the buildings thereon, namely, etc.

To have and to hold the premises hereby demised unto the second parties and their executors, administrators and assigns, for the term of —— years from the —— day of ——, 19——: yielding and paying therefor during the said term, yearly, the rent of —— dollars (and if a new building shall be erected on said premises by the lessor, his heirs or assigns, under the agreement hereinafter contained, yielding and paying the rent hereinafter agreed to be paid in such case, it being agreed that all the covenants and agreements contained herein shall apply to such rents as well as to the rent of —— dollars above specified), by equal quarterly payments on the usual quarterly days, the first of said payments to be made on the —— day of ——, 19——; and also, at the legal determination of the term hereby demised, a proportionate part of the rent for any part of the quarter then unexpired.

And the lessees do hereby, for themselves, their executors, administrators and assigns covenant with the lessor, his heirs and assigns that they will pay unto the lessor, his heirs and assigns the rent hereby reserved at the times herein provided, and all taxes, betterments, water rates and assessments whatsoever which may be assessed or imposed upon or in respect of the demised premises, or any part thereof, during said term; and will also keep all and singular the premises in such repair, order and condition as the same are in at the commencement of said term, or

may be put in during the continuance thereof, and will not make or suffer any strip or waste of the premises; and will keep and make good, with glass of the same kind and quality, all glass which now is or may hereafter be put into the premises; and that no unlawful, improper or offensive trade or business shall be carried on, in or upon the premises; and that the lessor, his heirs and assigns, and his or their agents, at reasonable times, may enter to view the premises, and to make any repair which he or they may desire to make, and also to make any improvements which he or they may find necessary to make, to protect his or their interest in said estate, at the expense of the lessees, it being understood and agreed, however, that neither he nor they shall be bound to make any repairs or improvements at his or their own expense, nor be liable for any damage by water or otherwise to any merchandise or property on the premises; but that all repairs and improvements of whatever nature, inside and outside of the building or on the demised premises, are to be made by and at the expense of the lessees, their executors, administrators or assigns.

And the lessees, for themselves and their executors, administrators and assigns, do also covenant that they will not assign this lease without first obtaining the lessor's written assent, and will at the determination of the said term, either by forfeiture, lapse of time, or as herein provided or otherwise (unless they shall purchase the same under the agreement hereinafter contained), peaceably quit and deliver up to the lessor, his heirs or assigns the said premises, together with all future additions and erections thereon, vacant and unencumbered, in good and substantial repair, order and condition in all respects; and that they will at all times keep the buildings thereon fully insured against loss by fire and other hazards, in companies satisfactory to the lessor, his heirs or assigns, by policies approved by and issued and payable to him or them, but paid for by the lessees, their executors, administrators or assigns, and that in case they do not do so the lessor may procure such insurance at their expense, and they agree to pay for the same, and that the lessor may enforce payment of the amount paid by him therefor, with-

out waiver of or prejudice to any other rights by him under this instrument.

And if said buildings shall be damaged or destroyed by fire, the lessor, his heirs or assigns shall apply the amount received by him or them upon the insurance policies toward the repair of said buildings, or the construction of a new building upon the demised premises unless the lessor, his heirs or assigns shall give notice, as hereinafter provided, of his or their desire to erect a new building thereon under the right so to do by the provisions of this instrument. And if such insurance money shall be more than sufficient to make such repairs or to so rebuild, and to cover all damages by fire to the lessor, then the balance thereof, upon the completion of such repairs or rebuilding to the satisfaction of the lessor, shall be paid over to the lessees.

But if said building shall be totally destroyed by fire, or be damaged by fire or otherwise to the extent of — dollars, in the judgment of the lessor, his heirs or assigns, and he or they shall, within — days after such destruction or damage, give written notice to either of the lessees, their executors, administrators or assigns that he or they desire to erect a new building upon said demised premises, then, unless the lessees shall terminate this lease by a notice that they do not desire to have such building erected, as hereinafter provided, he or they shall have the right so to do, and shall have the right to the possession and control of the demised premises for such time as they may require for that purpose, in the same manner and to the same extent as though this lease were not in existence, but without prejudice to any other rights or obligations of either of the parties hereto; and during the time that the lessees are deprived of the use and possession of the demised premises by such construction of a new building thereon, the rent hereinbefore reserved, or a just and proportionate part thereof, shall be suspended and abated. And from and after the completion of the said new building by the lessor, his heirs or assigns, said lessees, their executors, administrators or assigns shall pay to the lessor, his heirs or assigns, in addition to the rent hereinbefore reserved, on the same days on which such rent is to be paid, and as an addition thereto, and

as a part of the rent of the demised premises, a sum equal to — per cent. per annum, payable quarterly, on the amount of money expended by the lessor, his heirs or assigns in the construction of such new building (such amount to include interest at — per cent. per annum upon the money so expended from the times when it is expended till the completion of the building), in excess of the amount received by him or them upon policies of insurance paid for by the lessees upon the old building, and for materials from the old building, which are to be sold at public auction to the highest bidder, on such notice and conditions as the lessor, his heirs or assigns may make.

If, however, said building shall be totally destroyed by fire, or be injured by fire or otherwise to the extent of — dollars, in the judgment of the lessor, his heirs or assigns, and he or they shall, within — days after such destruction or damage, give written notice to the lessees, their executors, administrators or assigns, or either of them, that he or they desire to erect a new building upon said demised premises, as herein provided, and the lessees shall thereupon, within — days after being so notified, notify him or them in writing that they elect not to have such new building erected upon said premises upon the terms and conditions hereinabove set forth, such notice by the lessees shall be a determination of this lease and the term hereby demised; and the lessor, his heirs or assigns shall retain the moneys received from the insurance of the buildings so destroyed for his and their own use.

All the covenants, conditions and agreements herein shall apply and be in force as to any new building erected on said demised premises at any time during the term hereby demised, whether erected by the lessor, or by the lessees or the executors, administrators or assigns of either, hereunder; and nothing herein contained shall relieve the lessees, their executors, administrators or assigns from such obligation, but they shall be bound to rebuild the present or any other building on said demised premises, if the same shall be destroyed by fire during the continuance of this lease, and the lessor, his heirs or assigns shall not give written notice that he or they desire to erect a new building as herein above provided.



This lease is upon the condition that in case of a breach of any of the covenants and agreements in this instrument on the part of the lessees, their executors, administrators or assigns, to be observed, or in case the term hereby demised shall be taken from them by proceedings in bankruptcy, or in insolvency, or otherwise, or if they shall be adjudged bankrupt or insolvent, then, or in either of such cases, notwithstanding any license of any former breach of covenant or waiver of the benefit hereof in a former instance, it shall be lawful for the lessor, his heirs or assigns, at any time thereafter while the same continues, if it shall continue for — days after written notice to remedy it, to enter upon the demised premises, or any part thereof in the name of the whole, and to repossess the same, as of their former estate, and to expel, forcibly if necessary, the lessees and all tenants and occupiers, and to remove their effects, without being taken or deemed guilty of any trespass, and without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant, or any breach of any agreement contained herein. And in either of such cases, while such breach of covenant or condition continues, if it shall continue for — days after written notice to remedy the same, the lessor, his heirs or assigns may, at his or their election, and without prejudice to any remedies which might otherwise be used for any arrears of rent or preceding breach of covenant, or any breach of any agreements contained in this instrument, leave a written notice on the premises, and thereupon this lease and the said term shall cease, determine and be void, with the same effect as to all the rights, obligations and duties of the parties to this instrument that a determination of said term by lapse of time would have.

The lessor hereby covenants with the lessees, their executors, administrators and assigns that they, paying the rent hereby reserved, and performing and observing the covenants and agreements on their part herein contained, shall peaceably possess and enjoy the said demised premises without hindrance or interruption on his or their part.

In witness whereof, etc.

1. See ante, vol. 3, §§ 1911, 2237; vol. 5, § 4561.

**5845. Lease of farm.**

This indenture, made this — day of —, 19—, between — of —, the lessor, of the one part, and — of —, the lessee, of the other part, which expressions, lessor and lessee, shall include executors, administrators and assigns of such parties where the context so requires or admits, witnesseth, that the said lessor hereby leases and demises unto the said lessee all that farm and lands in the town of —, county of —, called — farm, with the farmhouse and other buildings, thereon bounded and described, etc.; excepting and reserving out of this demise all timber and other trees, and the right to enter and cut and remove the same: To hold the said premises, except as aforesaid, unto the lessee, for the term of — years from the date of these presents; yielding and paying therefor, during the said term, the yearly rent of — dollars, clear of all deductions, by equal half-yearly payments on the — day of — and the — day of — in every year, the first of such payments to be made on the — day of — next. And the lessee hereby covenants with the lessor that the lessee during the said term will pay all rates, taxes and outgoings now or hereafter payable in respect of the said premises; and will keep the said premises insured against loss or damages by fire in such office as the lessor shall approve; and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the lessor; and will keep the said farmhouse and buildings, and all fences, ditches, drains, watercourses, gates, fixtures and things, upon or about the said house, buildings, farm and lands, in good condition and complete repair, and without any alteration, except such as the lessor shall approve of; and will cultivate, manure and manage the said farm and lands in a fair and proper manner, according to the most approved course of husbandry; and will, at the expiration or sooner determination of the said term, yield up the said premises in such good condition and repair, and in fair and proper order, as aforesaid unto the lessor; and that the lessor, and his agents, surveyors and workmen may at all reasonable times during the said term enter upon the said premises to inspect the same, and to cut and remove timber and other trees; and that he will not assign or underlet

any part of the said premises without the lessor's written consent : provided always, that on any breach of any of the lessee's covenants herein contained, the lessor may re-enter upon the said premises, and immediately thereupon the said term shall absolutely determine. And the lessor hereby covenants with the lessee that the lessee, performing and observing all the covenants by him herein contained, may quietly hold and enjoy the said premises during the said term, without any interruption by the lessor, or any person claiming through him.

In witness, etc.

**5847. Lease by tenant for life with reversion clause.**

Indenture made this — day of —, 19—, between — of —, hereinafter called tenant for life, of the first part; and — of —, hereinafter called the reversioner, of the second part; and — of —, hereinafter called the lessee, of the third part.

Whereas the said tenant for life is entitled to the house and lands hereinafter described, for the term of his natural life, the immediate reversion expectant thereon being vested in the said reversioner, his heirs and assigns;

And whereas the said tenant for life hath agreed to demise, and the said reversioner to confirm, the said house and lands unto the said lessee for the term of — years, to commence from the — day of — next, at the rents, and under and subject to the covenants, stipulations and agreements hereinafter contained:

Now this indenture witnesseth, that in consideration of the rents and covenants hereinafter reserved and contained on the part of the said lessee to be paid and performed, the said tenant for life doth by these presents demise, lease and to farm-let, and the said reversioner doth by these presents ratify and confirm unto the said lessee, his executors, administrators and assigns all (describe parcels), and all rights, members, privileges and appurtenances to the said premises belonging.

To have and to hold the said premises, with the appurtenances, unto the said lessee, his executors, administrators and assigns, for the term of — years from the — day of —, 19—.

Yielding and paying therefor yearly, and every year during the said term, and so in proportion for any less time than one year, the yearly rent of ——— dollars, payable by four equal quarterly payments on the usual quarter days, the first payment to be made on the first day of ——— next.

And the said lessee doth hereby for himself, his heirs, executors and administrators, covenant with the said tenant for life, his executors, administrators and assigns, and also with the said reversioner, his heirs and assigns, that he, the said lessee, his heirs, executors or administrators will, during the said term, pay unto the said tenant for life and his assigns during his life, and in case of his decease during the continuance of the said term, unto the said reversioner, his heirs or assigns, the said hereinbefore reserved rent of ——— dollars, by equal quarterly payments, at the respective times hereinbefore appointed for payment thereof. (Insert covenants by lessee to pay rates and taxes, not to assign or underlet, and to keep interior of premises in repair.)

And the said tenant for life and reversioner do each hereby for themselves and their respective heirs, executors and administrators severally covenant with the said lessee, his executors, administrators and assigns, that upon payment of the rent hereby reserved, and subject to the performance of the covenants, stipulations and agreements hereinbefore contained on the part of the tenant or lessee to be paid, observed and performed, the said lessee, his executors, administrators and assigns shall and may peaceably and quietly have, hold, use, occupy, possess and enjoy the said house and lands, and all and singular other the premises hereby demised, with their appurtenances, during the said term hereby granted, without let, suit, eviction, interruption or disturbance of or by the said tenant for life or reversioner respectively, or any other person or persons whomsoever rightfully claiming under or in trust for them respectively.

And also that the said tenant for life, during the continuance of his estate and interest in the said demised premises, and after the determination thereof, that the said reversioner, his heirs or assigns shall and will from time to time, and at all times during the continuance of the said term, keep the exterior walls and

slated roofs of the said dwelling-house and outbuildings belonging to the said demised premises in proper and sufficient repair.

Provided always, that if the said yearly rent of — dollars shall be unpaid for the space of — days next after any or either of the days hereinbefore appointed for payment thereof (being demanded), or if breach shall happen to be made in all, any or either of the covenants hereinbefore contained, on the part of the said lessee, his executors, administrators or assigns, to be performed, then for all, any or either of the causes aforesaid, it shall be lawful for the person or persons for the time being entitled to the immediate reversion expectant on the said term hereby granted, into and upon all and singular the said demised premises to enter, and the same, with the appurtenances, to hold and enjoy, in the same manner as if these presents had never been made and executed.

In witness, etc.

**5848. Covenants which may be used in leases.**

(1) And the said lessee doth hereby, for himself, his heirs, executors, administrators and assigns, covenant with the said lessor that he, the said lessee, his executors, administrators and assigns will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever.

(2) And also will pay all taxes, rates, duties and assessments whatsoever now charged, or hereafter to be charged, upon the said demised premises, or upon the said lessor on account thereof (excepting the land-tax, and all such other taxes, rates, duties and assessments, or any portion thereof, which the lessee is or may be by law exempted from).

(3) And also will, during the said term, well and sufficiently repair, maintain, pave, cleanse, mend and keep the said demised premises, with the appurtenances, in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, shelves, pipes, pumps, locks and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where and so often as the same may need be.

(4) And also that the said lessee, his executors, administrators and assigns will, in every — year during the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colors, in a workmanlike manner.

(5) And also that the said lessee, his executors, administrators and assigns will every — year paint the inside wood, iron and other work now or usually painted, with two coats of proper oil colors, in a workmanlike manner; and also repaper, with paper of a quality as at present, such parts of the premises as are now papered; and also wash, whiten or color such parts of said premises as are now plastered.

(6) And also that the said lessee, his executors, administrators and assigns will forthwith insure the said premises hereby demised to the full value thereof, in some respectable insurance office, in the joint names of the said lessor, his executors, administrators and assigns, and the said lessee, his executors, administrators and assigns shall keep the same so insured during the said term, and will, upon the request of the said lessor or his agent, show the receipts for the last premium paid for such insurance for every current year; and as often as the premises hereby demised shall be burnt down or damaged by fire, all and every the sum or sums of money which shall be recovered or received by the said lessee, his executors, administrators or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt or damaged by fire as aforesaid.

(7) And it is hereby agreed that it shall be lawful for the said lessor, or his agents, at all reasonable times during the said term, to enter the said demised premises to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the premises; and further, that all wants of reparation which upon such view shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, administrators and assigns will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

(8) And also that the said lessee, his executors, administrators and assigns will not convert, use or occupy the said premises, or any part thereof, into or as a shop, warehouse or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used otherwise than as a private dwelling-house, without the consent of the lessor.

(9) And also that the said lessee shall not nor will during the said term assign, transfer or set over, or otherwise by any act or deed procure the said premises or any of them to be assigned, transferred or set over unto any person or persons whomsoever, without the consent in writing of the said lessor, his executors, administrators or assigns, first had and obtained.

(10) And further, that the said lessee will, at the expiration or other sooner determination of said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections and fixtures thereon, in good and substantial repair and condition in all respects, reasonable wear and tear and damage by fire only excepted.

(11) Provided always, and it is expressly agreed, that if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or in case of the breach or nonperformance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators and assigns, then, and in either of such cases, it shall be lawful for the said lessor, at any time thereafter, to enter into and upon the said demised premises, or any part thereof in the name of the whole, and the same to have again, repossess and enjoy, as of his or their former estate, anything hereinafter contained to the contrary not excepting.

(12) And the lessor doth hereby, for himself, his heirs, executors, administrators and assigns covenant with the said lessee, his executors and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and

enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators or assigns, or any other person or persons lawfully claiming by, from or under him or them or any of them.

(13) And that he, the said lessee, his executors, administrators or assigns shall and will, at his or their own expense, from time to time insure, or cause to be insured, and during the said term keep insured, every additional building which may hereafter, with such approbation as is hereinafter mentioned, be built on the same ground hereby demised, or any part thereof, and effect the same within six days after each such building shall be built or covered in, or within six days after such earlier period at which the said lessee, his executors, administrators or assigns shall be required by lawful authority; and will increase the amount of such insurance, respectively, when and as each such building shall be completed, so as to make the sum insured thereon equal to three-fourth parts, at least, of the then value thereof.

(14) That he, the said lessee, his executors, administrators or assigns will, within the first three years of the said term hereby granted, pay out and expend the sum of \$—, at least, in and upon the substantial repair of the said demised premises, and every part thereof; the application of the said sum, and the said reparation of the said premises as aforesaid, to be from time to time surveyed, inspected and approved by such proper person or persons as the said lessor, his heirs or assigns, shall appoint and direct to survey and inspect the same; and also that he, the said lessee, his executors, administrators and assigns will, when required, produce and deliver to the said lessor, his heirs or assigns the bills and receipts of the different tradesmen employed in doing such repairs as aforesaid for the respective sums to be paid them for that purpose, or duplicate thereof.

(15) And also that he, the said lessee, his executors, administrators and assigns shall and will from time to time, during the said term, pay a reasonable share of the charges of making, repairing and cleansing all party-walls, fences, sewers, drains, gutters and other easements belonging, or which shall belong, to



the said premises hereby demised, in common with the owners or occupiers of any adjoining premises.

(16) And that he, the said lessee, his executors, administrators and assigns shall not, by building or otherwise, stop or obstruct any light or lights belonging to any messuage or tenement, the estate or interest whereof in possession or in reversion is in —.

(17) And also that the said lessee, his executors, administrators and assigns will not, at any time or times during the said term, permit any way or thoroughfare over or through any part of the said premises hereby demised.

(18) That in case the said premises hereby demised, or any part thereof, shall at any time or times during the continuance of this demise happen to be damaged or destroyed by fire, he, the said lessor, his heirs or assigns will, with all convenient speed, repair or rebuild the same premises which shall or may happen to be damaged or destroyed by fire as aforesaid, and make the same fit for the habitation of the said lessee, his executors, administrators or assigns.

1. See ante, vol. 5, §§ 4555-4566.

**5849. Covenant by lessee to pay additional rent in consideration of alterations in buildings to be made by landlord.**

Indenture made the — day of — between — of —, the lessee, of the one part, and —, the landlord, which expressions, lessee and landlord, shall, where appropriate, include their heirs, legal representatives and assigns.

Whereas by an indenture of lease dated the — day of — made between said landlord and said lessee, the parcel of land described in said lease was demised to the lessee for the terms of — years from the — day of — at the yearly rent of — dollars.

And, whereas, the lessee has requested the landlord to make certain additions and alterations in buildings thereon, and the landlord has consented so to do upon the terms hereinafter contained.

Now this indenture witnesseth as follows:

In consideration of the covenants by the lessee hereinafter

contained, the landlord hereby covenants with the lessee to make the several additions and alterations specified in the schedule hereto in conformity with plans and specifications already approved by the landlord and lessee, and to complete the same on or before the — day of —.

In consideration of the making of said additions and alterations the lessee hereby covenants with the landlord to pay him from and after the completion of said alterations and additions during the residue of the term granted by said lease the yearly rent of — dollars on equal payments upon the days appointed for payment of rent by said lease, the rent hereby reserved to be in addition to and not in substitution for the yearly rent of — dollars, reserved by said lease.

Upon the completion of said alterations and additions, the covenants and stipulations contained in said lease now applicable to the said premises shall continue to be applicable to and enforceable in respect of said premises as altered and shall extend to all additions made thereto; and the lessee hereby declares that said premises shall stand charged with the payment to the landlord of said additional rent of — dollars at the times and in the manner appointed for payment thereof.

The right of re-entry reserved by said lease to the land shall be exercisable by him as well in the case of the nonpayment of said additional rent hereby covenanted to be paid or of the breach of any of the covenants herein contained, as well as in case of the nonpayment of the rent reserved by the said lease or of a breach of any of the covenants on the part of the lessee therein contained.

In witness, etc.

Schedule above referred to.

(Signatures and seals of both parties.)

1. See ante, vol. 5, § 4561.

### 5850. Lease of factory.

This agreement, made this — day of —, 19—, between — of —, of the first part, and — of —, of the second part.

In consideration of the payment of rent hereinafter reserved,

and of the covenants herein, the first party hereby grants permission unto said second party, his executors, administrators and assigns for a period of — years from date, the following property:

All that property now used as an engine-house now situated at No. — street, in the city of —, and the use and enjoyment of all machinery, fixtures, implements, utensils and things which are now in or upon said premises.

All and singular the buildings, offices and premises situated between No. — and — on — street in said city of —, and the use and enjoyment of all machinery, fixtures, implements, utensils and things which are now in or upon said premises and used for the purposes of said factory.

All that tract and parcel of ground bounded and described as follows (here describe) and now used as a railroad switch and driveway, the same to occupy and use either with horses, vehicles, carts or trucks, with the full and free right of ingress, egress and passage at all times, and for all the purposes of said railroad switch.

To have and to hold the same unto the said second party, his executors, administrators and assigns, in consideration of a yearly rental of — dollars, due and payable on the — day of — of each year.

And the said second party hereby agrees to pay said rent on said days of payment whenever the same shall become due, without any deduction, and also to pay and discharge all present and future taxes, charges, rates and assessments upon the said premises hereby leased, and will at all times keep the said first party indemnified from the payment thereof.

In case the said rent hereby reserved shall at any time during said term fail to be paid as hereinbefore provided, it shall be lawful for the said first party to enter said premises hereby leased and distrain for said rent so in arrears, and sell and dispose of in such manner as is authorized by law all property of said second party until enough money has been realized to pay said rent in arrear. If it shall be necessary to institute legal proceedings for the collection of said rent so found to be in arrears, said second

party hereby covenants and agrees that he will bear the expenses of the same.

In case said factory should be destroyed by act of God or by reason of fire so that the operation thereof must necessarily be stopped, the rent above mentioned to be paid shall cease, and not be chargeable during the continuance of said stoppage.

(Add covenant to repair, etc.).

In witness, etc.

### 5851. Agreement for cultivating land on shares.

Agreement made this — day of —, 19—, between — of —, the landlord, and — of —, the tenant. The said landlord agrees, in consideration of the promises and agreements herein contained and to be performed on the tenant's part, that the said tenant may enter into and upon, and use and occupy, all that part of the landlord's farm situate at —, in the county of —, described as follows, etc.: containing about — acres; to hold for the term of — months from and after the date hereof, for the purpose of cultivating, tilling and sowing the same, and harvesting the crops thereof for the current year, with free right of passing over the ways and roads upon any other lands of the said landlord for the purpose of reaching said demised lands.

And the said tenant hereby agrees with the said landlord that he will in a proper and skilful manner plough, cultivate, sow and plant the said demised lands so as to obtain good crops from the same for the current year, and will at the proper time harvest the crops, and thresh and winnow the grain, and will deliver one-half part of all the crops and grain raised upon said land to the said landlord at such place on or near his said farm as he may direct, within — days after the crops shall have been gathered, or the grain shall have been winnowed; and will also deliver, as above provided, one-half of the straw and hay that may be cut upon said lands.

In witness, etc.

1. Damages for breach of agreement, see ante, vol. 3, § 2234.

**5852. Agreement by lessee with his landlord for apportionment of rents.**

Agreement made this — day of —, 19—, between — of —, the tenant, of the one part, and — of —, the landlord, of the other part.

Whereas by an indenture of lease dated —, 19—, and made between the said landlord and tenant, the said landlord did lease unto the said tenant all those several buildings and parcels of land therein described for the term of — years, at the yearly rent of — dollars;

And whereas the said landlord contemplates making sales thereof in several separate lots, and desires to apportion the said yearly rent among the several lots in such proportion as he shall think fit;

And whereas the said apportionment cannot be made without the tenant's consent, he has at the landlord's request consented to enter into the agreements for that purpose hereinafter contained:

Now these presents witness, that in pursuance of such agreement, and in consideration of the sum of — dollars paid by the said landlord to the said tenant, the receipt of which is hereby acknowledged, the said tenant, hereby for himself, his heirs, executors and administrators agrees with the said landlord, his heirs and assigns that the said landlord shall and may apportion the said yearly rent of — dollars among the tenements and premises so as to be sold as aforesaid in such proportion and generally in such manner as the said landlord shall think fit; and also that the said tenant will, upon the completion of the purchase of any part of the said tenements and premises, at the request and cost of the purchaser or purchasers thereof respectively, execute all such deeds and other assurances as may be necessary for making such apportionment valid and effectual against the said tenants, and also for his becoming tenant of the part so to be sold as aforesaid to the purchaser or purchasers thereof.

In witness, etc.

**5853. License to lessee to make alterations in buildings.**

This indenture made this — day of —, between —, the landlord, and — of —, the lessee.

(Recital of lease and the provision therein against altering buildings.)

Whereas the lessee therein is desirous of making the several alterations in the buildings and works specified in the schedule hereto annexed, and has requested the landlord to grant him license to make the same, in conformity with the plan and specifications approved by the landlord's architect, and the landlord has agreed to grant such license, subject to the conditions hereinafter expressed.

Now this indenture witnesseth that in pursuance of said agreement the landlord grants unto the lessee license to make in and upon the said premises the several alterations and works specified in the schedule hereto, on condition that the same shall be completed within —— months from the date hereof, in conformity with the plans and specifications hereinbefore referred to and under the architect's supervision and to his satisfaction.

All the lessee's covenants and conditions contained in said lease applicable to the leased premises shall continue to be applicable to the same as altered, and shall apply to all additions made thereto.

In witness, etc.

(Signatures and seals of both parties.)

1. See ante, vol. 5, § 4561.

2. See also LICENSE.

#### 5854. License to assign.

I, the undersigned, the lessor in a certain indenture of lease dated the —— day of ——, made between me and —— of ——, hereby give my license and authority to him to make an assignment of said lease to —— of —— for the remainder of the term of said lease. Provided, however, that this license is restricted to the particular assignment hereby authorized, and, save as aforesaid, the covenant in said lease contained against any assignment or underletting shall remain in full force and effect.

Dated the —— day of ——, 19——.

(Signature of lessor.)

1. See ASSIGNMENTS, ante, 5279, 5282, 5285; also ante, vol. 5, ch. 137.

**5855. License to underlet.**

I, the undersigned, hereby consent that —, lessee in a certain lease made by me to him, dated the — day of — for the term of — years, may underlease the premises demised to — of — for the term of — years. Provided that this license shall be restricted to the particular underlease hereby authorized, and the covenant in said lease made by me against assigning or other underletting shall remain in full force and effect.

Dated the — day of —, 19—.

(Signature of landlord.)

1. See ante, vol. 5, § 4575.

**5856. Surrender of lease by executor of lessee.**

Agreement made the — day of — between —, executor of deceased lessee, hereinafter called the tenant, of the one part, and —, hereinafter called the landlord, of the other part.

The tenant agrees to surrender to the landlord on the — day of — and the landlord agrees to accept the surrender on that date the premises described in a lease dated the — day of —, and made between (parties described).

The tenant agrees to pay to the landlord on the date hereinbefore mentioned the sum of — dollars, which the landlord agrees to accept in full discharge of the liability of the tenant and of the estate of the deceased lessee in respect of the covenants on his part comprised in said lease.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 1, § 512; vol. 2, § 1486; vol. 3, §§ 1907, 2040; vol. 4, §§ 3780, 4546.

**5857. License to assign a lease indorsed thereon.**

Know all men by these presents, that whereas the (lessee) named in the within-written lease therein covenanted with me, the lessor therein named, that he would not assign said lease nor underlet the whole or any part of the premises to any person: Now these presents witness that I, the said lessor, do hereby grant unto the said lessee license to assign all his estate, term and in-

terest in the said premises unto —— of ——, his executors and administrators, subject to the payment of the rent reserved by, and the performance and observance of the covenants on the part of the lessee, and conditions contained in the said indenture of lease, and henceforth to be paid, performed and observed.

Witness, etc.

1. See ante, vol. 5, § 4575.

**5858. License to underlet part of leased premises.**

I, the undersigned, being the lessor named in an indenture of lease made between myself, of the one part, and —— of ——, of the other part, do hereby consent that the said lessee may underlease a portion of the premises comprised in said lease, namely, etc., unto —— of ——, for the whole remaining term of said lease, provided that this consent shall not authorize any further underletting, or parting wholly or partially with the possession of said premises, or any part thereof, or prejudice or affect any of the covenants, conditions or provisions in the said lease contained, except to the extent hereinbefore expressed.

Witness my hand the —— day of ——, 19—.

1. See ante, vol. 5, § 4575.

**5859. Surety's obligation for the lessee to be indorsed on the lease.**

In consideration of the letting of the premises above described, and of the sum of —— dollars, I hereby become surety for the punctual payment of the rent, and performance of the covenants in the above-written agreement mentioned, to be made and performed by ——, the within-named lessee; and if any default shall be made therein, I do hereby promise and agree to pay unto the within-named lessor, his heirs or assigns such sum or sums of money as will be sufficient to make up such deficiency, and fully satisfy the conditions of the said agreement, without requiring any notice of nonpayment, or proofs of demand being made. Given under my hand and seal the —— day of ——, 19—.

1. See, generally, INDEMNITY AND GUARANTY CONTRACTS, ante, 5746, 5747, 5748.



**5860. Agreement by tenant at will to pay rent in advance.**

I, — of —, in the county of —, occupy as tenant at will the following described premises, the property of — of —. (Description.) And I hereby agree with said —, owner, to pay as rent for said premises — dollars for each and every calendar month, payable on the last day of each preceding month in advance, for the month next ensuing; the month next ensuing to begin on the day succeeding the day on which said rent is payable, provided, and only upon condition, that said rent has been paid. Witness my hand at —, 19—.

1. See ante, vol. 5, §§ 4581, 4582.

**5861. Acknowledgment of title so as to prevent the running of the statute of limitations.**

I, — of —, do hereby admit and declare that I am now in possession of a certain parcel of land (describe it), situate at —, in the county of —, by the sufferance and permission of — of —, the owner of said land; and that I occupy the same subject to the title of the said —, and hold the same under him. Dated this — day of —, 19—.

1. See ante, vol. 3, § 2670; vol. 5, § 4587.

**5862. Renewable lease for ninety-nine years.**

This lease, made this — day of —, 19—, by and between —, of the city of — and state of —, of the first part, and —, of the same place, of the second part.

Witnesseth, that the said —, first party, in consideration of the payment of the rent hereinafter expressed to be paid, does hereby demise and lease unto the said —, second party, his personal representatives and assigns, all that piece or parcel of ground situate and lying in —, and thus described, that is to say, beginning (give full description of the property), together with the improvements thereon, and the rights and appurtenances thereto belonging or in any wise appertaining, to have and to hold the above-demised property unto the said —, second party, his personal representatives and assigns, for the term of ninety-nine years, beginning on the day of the date of these presents, he, the said —, second party, his personal represent-

atives or assigns yielding and paying therefor, in each and every year during the continuance of this demise, unto the said —, first party, his heirs or assigns, the rent or yearly sum of — dollars, payable in equal half-yearly instalments accruing from the — day of —, 19—, over and above all deductions for taxes and assessments of every kind levied or assessed on said demised property, or the rent issuing therefrom.

Provided, that if the said rent shall be in arrears in whole or in part for — days, then it shall be lawful for the said —, first party, his heirs or assigns, to re-enter upon the hereby demised property, and hold the same until all arrearages of rent therefrom, and all expenses incurred by reason of such nonpayment, shall be fully paid.

And provided, further, that if the said rent shall be in arrears for — months, then the said —, first party, his heirs or assigns, may re-enter upon the property hereby demised and hold the same, as if this lease had never been made.

And the said —, second party, for himself, his personal representatives and assigns, hereby covenants with the said —, first party, his heirs and assigns, to pay the aforesaid rent, taxes and assessments when legally demandable.

And the said —, first party, for himself, his heirs and assigns hereby covenants with the said —, second party, his personal representatives and assigns, that on payment by the said lessee, his personal representatives and assigns, of said rent, and the performance of all covenants herein on his or their part to be performed, he, the said —, first party, will warrant specially the property hereby demised, and that he will execute such other and further assurances as may be requisite; also, that, at any time during this demise, the said —, first party, or his heirs or assigns, will, on payment to him or them of the sum of — dollars as renewal fee, execute and deliver, or cause to be executed and delivered to the said —, second party, his personal representatives and assigns, at his or their request, a new lease of the above-demised property for another term of ninety-nine years, to commence on the expiration of this lease, subject to the same rent and containing the same covenants, so that the demise

hereby created may be renewable and renewed from time to time forever ; also, that at any time after the expiration of fifteen years, counting from the day of the date of these premises, during the continuance of this demise, on the payment of the sum of money equal to the capitalization of the rent hereby reserved, at the rate of four per cent. per annum, to wit, the sum of — dollars, in gold coin of the United States, or its equivalent, with all rents accrued and unpaid, and with a pro rata part of the accruing six months' rent, at the cost of the said —, second party, the aforesaid party shall be released and discharged from the payment of the aforesaid rent and all the covenants herein contained by a deed sufficient for that purpose.

Witness their hands and seals, the day and date first above written.

\_\_\_\_\_. (Seal.)

\_\_\_\_\_. (Seal.)

1. See ante, vol. 5, §§ 4557, 4558.

### 5863. Lease of business office.

Indenture made the — day of — between —, hereinafter called the landlord, of the one part, and — of —, hereinafter called the tenant.

The landlord lets and the tenant hires — rooms on the — floor of the building No. — on — street in the city of — with the lavatory and conveniences connected or enjoyed therewith and the use of the corridors and halls leading thereto, and the passenger elevator provided for the use of the tenants in said building, together with steam heat for said offices and building.

The tenancy shall commence as from the — day of — and continue for the term of — years ; and the rent shall be — dollars per annum, payable monthly on the last day of each month.

The tenant agrees to observe the following stipulations:

To use the premises as professional or business offices only.

Not to exhibit any signs of business except his name and professional or business occupation upon the doors and at the entrance on the ground floor of the building in the form and character and at the place indicated by the landlord.

Not to do or permit to be done upon the premises anything which may be an annoyance or disturbance to the landlord or his other tenants in the building.

Not to assign, underlet or in any way part with the possession of the demised premises without the consent of the landlord.

To keep the premises in tenantable repair, damage by fire, unavoidable casualty and usual wear and tear alone excepted.

The landlord agrees to observe the following stipulations:

To pay all rates and taxes in respect of the premises.

To keep the premises other than said offices, including the stairways, halls and elevator in good repair.

To insure the premises and reinstate the same in case of damage by fire.

Provided always, and it is expressly agreed, that the landlord may determine this tenancy and re-enter upon the premises in the event of the rent or any part of it being at any time in arrear for — days, or of the tenant's failing to perform or observe any of the stipulations made on his part.

In witness, etc.

(Signatures of both parties.)

#### **5864. Lease of office in office building.**

This indenture witnesseth that the — office building company, of the city of —, — county, state of —, lessor, has this day leased to —, lessee, the following premises in said city, county and state, to wit: — in the — building, situate on lot —, and part of lot —, in square —, in said city, to have and to hold the same for and during the term of — from the — day of —, 19—.

And the said lessee hereby agrees to pay the said lessor, or order, as rent for said premises, the sum of — dollars per month, the said rent to be paid on the first day of each and every month in advance, during the continuance of this lease, at the office of the — office building company, in said building, without relief from valuation or appraisal laws.

The conditions of this lease are that the premises are to be used and occupied by the lessee as — and for no other purpose; that no apparatus for heating, or lighting, or for the production of power, other than that fur-

nished by the lessor, is to be placed in said premises; that no waste of any kind is to be thrown in the closets or halls or allowed to accumulate on the premises; that the said premises are not to be subleased or this lease assigned without the written consent of the lessor. It is expressly understood and agreed, by and between the lessor and lessee, that the "Rules" printed hereon, and numbered one to ten inclusive, are a part of this lease. It is expressly agreed that the lessor may, or may not, make alterations and repairs or inspection of said premises at his option; if the lessor elects to make such repairs or alterations, or inspection, the lessee hereby agrees that the lessor may enter upon the said premises for said purposes.

The said lessee also agrees to use said premises well, and surrender the same at the termination of the tenancy under this lease in as good condition as the same now are, or may at any time be put during said tenancy, the natural wear and tear or loss by fire excepted.

The lessor agrees to furnish water and electric light necessary for ordinary office use, and no more, and any light and water in excess of such ordinary office use shall be paid for by lessee at its fair value, and to furnish reasonable janitor service in the said offices, halls, stairways and water-closets, and to furnish, free of additional charge, steam heat for said offices, but shall not be liable for unavoidable accidents or for temporary interruption in the supply of water, heat or light, nor for any tort janitors may commit or permit in the leased premises.

In the event the leased premises shall be so damaged by fire, storm, or other cause beyond the control of the lessee, as to make them untenable, this lease shall terminate at once, and the lessee shall only be liable for the current month's rent. The leased premises will be considered untenable if the building is destroyed or damaged to such an extent as to prevent a continuance of business therein.

And it is further agreed that the said lessor has not made any statement or promise, or entered into any undertaking, oral or otherwise, in conflict with or in addition to this lease, or that is in anywise to invalidate any of its provisions, or enlarge the same, or make it liable for damages; but, on the contrary, it is distinctly understood between the parties hereto that said lessee enters into this lease and accepts the tenancy thereby created after a personal inspection of the premises and knowledge as to their condition, uninfluenced by any representation made by or on behalf of the lessor.

No safe, chest or other article of furniture, the weight of which exceeds two thousand pounds shall be placed in its rooms except under special permission.

At the expiration of this lease, or on failure to pay rent when the same is due, or on failure to comply with any of the conditions of this lease, the lessor shall have the right to terminate the same at once, without notice, and the lessor, its representatives and assigns may enter upon and take possession of said premises and expel the occupant thereof without in anywise being a trespasser; and the failure of the said lessor to take possession of said premises at the time aforesaid shall not estop it from afterward asserting said rights, and the occupation of said premises by the tenant after the expiration of said lease, or the forfeiture thereof, shall give him no right as a tenant, but he may be expelled at any time without notice.

It is further agreed that the payment by the lessee of rent for the month succeeding the expiration of this lease or any continuation thereof and the acceptance of such payment by the lessor, shall be understood and considered as a continuation thereof for — from such expiration or continuation on the same terms and conditions as herein set forth, or if any option has been given said lessee herein for an additional term, the payment of rent for the first month after the expiration of the original term of this lease shall be understood and considered as an exercise of said option on the part of said lessee.

On failure to pay rent at maturity, or give possession at the expiration of this lease, as liquidated damages for said failure it is agreed that an amount double the amount above specified shall be paid for the time the rent remains due and unpaid or said tenant holds possession without right. And the said lessee agrees to pay all attorney's fees and other costs pertaining to this lease or the enforcement of any of its provisions.

It is further agreed that no change shall hereafter be made in any of the terms of this lease unless the same is evidenced by a written memorandum signed by both of the parties hereto.

#### RULES.

1. No dust, rubbish or litter, shall be swept from any room into any of the halls, except under the direction of the custodian; nor shall the same, or anything else, be thrown or emptied from any of the windows, of said building.

2. The halls and water closets, so far as either shall not be directly leased, must be kept free and clear from all boxes, furniture and other obstructions, and the lights therein will remain in exclusive charge of the custodian of the building, and no slops, dirt or other rubbish, or anything liable to clog the pipes, shall be emptied into the water-closets or washbasins.

3. No tenant or occupant shall employ any janitor or other person to take care of premises occupied by him other than the regular janitors of the building, except by written permission of the owners of the building or their authorized agent.

4. No sign shall be attached to said building, and no sign shall be put up or painted on said building, in the halls, staircases or entrances except upon the glass in the doors and windows of the respective rooms, and all lettering must be of the style approved by the owners of the building or their authorized agent.

5. All tenants and occupants must observe strict care not to leave their windows open when leaving their rooms, nor when it rains or snows; and for any fault or carelessness in these respects, or any of them, shall make good all injury sustained by other tenants, and to the owners for damage to paint, plastering, or other parts of the building resulting from such default or carelessness.

6. No painting or alteration of any part of the building shall be made, nor shall there be any nailing, boring or screwing into the woodwork or plastering without the consent of the owner of the building or their agent. All changes and improvements shall be part and parcel of the building, and shall not be taken away at expiration of this lease.

7. Any damage to the building caused through the fault or neglect of the lessee shall be immediately repaired at the expense of the tenant, under the direction and to the satisfaction of the lessor.

8. No room or rooms shall be occupied as sleeping or lodging apartments at any time.

9. No part of said building shall be used or in any way appropriated for gambling or unlawful practice or practices; and no intoxicating liquors shall be sold upon any part of said building without the written consent of the owner of said building or its agent.

10. Window shades or awnings, where used, must be of design and color approved by the agent of the lessor, and shall be paid for by the tenant.

Witness our hands this — day of —, 19—.

The — Office Building Company,

By —, —,

President.

—.

—.

(Acknowledgment.)

#### 5865. Planter's contract.

This agreement made this the — day of —, 19—, by — of —, state of —, a planter, of the first part, and — of —, state of —, of the second part, witnesseth:

That the party of the second part shall be and is hereby employed to do the plantation work upon — plantation belonging to the first party, and that such employment is to continue from the — day of —, 19—, to the — day of —, 19—.

That the first party agrees to furnish —, and the second party agrees to exercise diligence in the cultivation and care of said plantation and to cultivate and care for the same to the best of his ability, both in tending and harvesting crops, and in the preservation of the buildings and structures situated on said plantation, during the continuance of this agreement.

That in consideration of the services to be rendered by the second party, the first party agrees to give him the sole use and benefit of all the crops raised upon said plantation which he shall cultivate in excess of — acres of the following crops, to wit: —.

That none of the said crops shall be removed from said plantation without written consent of the first party, and that for

any violation of this agreement by the second party he shall forfeit all his share and interest in and to said crops.

That the second party shall deliver to the first party the latter's share of said crops on or before the — day of —, 19—.

To the performance of this contract the first and second parties hereto bind themselves, their heirs, personal representatives and assigns.

Witness our hands, this — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_

Witnesses: \_\_\_\_\_  
\_\_\_\_\_

#### 5866. Lease with option to purchase.

Memorandum of agreement, made this — day of —, 19—, by and between — of —, state of —, party of the first part, and — of —, state of —, party of the second part, witnesseth:

The first party hereby leases and demises unto the second party the following described real estate: —, for the term of — years from the date hereof, together with all appurtenances, rights and privileges thereunto belonging, in consideration of the payment of — dollars, receipt of which is hereby acknowledged, and on the further consideration of the agreement of the second party to pay as rent for said premises on the — day of the — month of each year hereafter during the continuance of said lease, the sum of — dollars in United States currency.

And as a further consideration for said lease, the second party agrees to pay the current taxes and all taxes that may accrue thereon from year to year during the continuance of said lease, and also special assessments for public improvements that may be levied on said premises during the continuance of said lease, at the time when the same is payable, without incurring a penalty thereon, and also to keep the buildings on said premises insured against loss by fire, in some reputable insurance company approved by the first party, in a sum equal to two-thirds of the



value of said buildings, for the benefit of the first party as his interest may appear.

And it is further agreed by and between the parties hereto, that if said second party should fail to pay any taxes or assessments on said premises when the same shall become due, or to insure said property as aforesaid, the first party is hereby given the option to pay said taxes, assessments and insurance on said premises, and add the cost of the same to the next instalment of rent to become due.

And it is further provided that if the second party shall fail to pay any instalment of rent when the same shall become due and payable, or any instalment of rent augmented by any payment which the first party may have made on taxes, assessments or insurance as aforesaid, the said first party shall have the right to enter upon and take possession of said premises without thereby becoming a trespasser thereon.

And it is further agreed that a waiver of any default by the second party as aforesaid shall not be considered an estoppel as against the first party to take advantage of any subsequent default of the second party as aforesaid.

Said second party agrees to use reasonable diligence in the care and preservation of said premises, and to use them only for the purpose of —; and at the expiration of this lease, from whatever cause, to peaceably surrender said premises to said first party in as good condition as when he received them, natural wear and tear and consequences of the act of God excepted.

In consideration of the foregoing lease, it is further agreed by and between said first and second parties that the second party shall have the option at the expiration of this lease, from whatever cause, or at any time prior thereto, to purchase said premises upon the following terms and conditions: To pay to said first party the sum of — dollars, less the amount which he has paid to the first party as rent for said premises, and upon the payment of said sum by the second party to the first party, the first party agrees to convey said premises in fee simple to the second party by deed with full covenants of warranty. (Or provision may be made for the payment of the purchase-price by

instalments, with agreement by the vendor to convey the premises to the purchaser upon payment of all the instalments with accrued interest, or to convey the premises upon payment of a certain number of instalments and take a mortgage on the premises to secure the instalments which remain unpaid.)

And it is hereby further agreed by and between the parties hereto that the second party shall not assign this lease or sublet said premises without the written consent of said first party, and that until the second party has exercised his option herein granted in conformity with this agreement, he shall be considered only as a tenant of said premises under said first party, and shall have or exercise no other rights in the same.

In testimony whereof, etc.

**5867. Lease with option to purchase—Another form.**

This agreement, made this — day of —, 19—, between —, lessor, party of the first part, and —, lessee, party of the second part,

Witnesseth, that in consideration of — dollars to the first party paid by the said party of the second part, first party does hereby lease to the said party of the second part all that certain tract or parcel of land in the county of — and state of —, to wit: (here describe land).

To have and to hold the land described to the party of the second part, and to his legal representatives and assigns, for — years from the date hereof, provided second party or those holding through him shall pay first party or his legal representatives or assigns, without demand, — dollars four times in each year during said period, payable on the first days of January, April, July and October of each year, in advance, and shall pay all taxes and assessments on said land and keep the buildings thereon insured for their insurable value, loss payable to lessor, subject to eviction and to abrogation of this agreement, at will of lessor after thirty days of default in payment of either rent, taxes, assessments or insurance premiums. Time is of the essence of this contract.

And first party hereby covenants for himself and for his heirs and assigns, upon the faithful performance of the above condi-

tions by the party of the second part, or by those holding through him, to execute and deliver to him or them at any time within the period limited above, a good title in fee to the land described herein, upon payment to first party or to his legal representatives of — dollars, said last-named sum being in addition to the sum heretofore specified, also in addition to amount of taxes and insurance paid.

And the said lessee for himself and his legal representatives and assigns promises to pay said principal sum mentioned above and the said quarterly instalments of rental as herein stipulated on the dates named and all taxes and assessments, and if default be made therein for thirty days, to surrender possession of said property to said lessor.

In witness whereof, the said lessor and lessee have hereunto set their hands and seals this — day of —, 19—.

— —, 19—.

**5868. Lease with option to purchase—Another form.**

This indenture, made this — day of —, 19—, by and between — of the city and county of —, in the state of —, lessor, and — of the same place, lessee, witnesseth:

That the said lessor does hereby lease, demise and let unto the said lessee the following described premises situated in the county of —, and state of —, to wit: (here describe premises). And any and all buildings, sheds or other improvements which may be made or put thereon, shall form, be and remain a part of said premises.

To hold for the term of — months from the first day of —, 19—, the said lessee yielding and paying therefor the monthly rent of — (\$—) dollars in advance, to be paid on the first day of each and every month during said term, and payable at the office of —, the first payment to be made on the first day of —, 19—. The said lessee does covenant and agree to pay the said rent at the times, at the place and in the manner aforesaid promptly and without delay during the said term.

It is expressly agreed and understood by and between the parties hereto that it shall not be necessary for the said lessor or

its agent to demand said rent at any place other than the place above specified for the payment of the same.

It is mutually agreed and understood that said premises and every part thereof shall and must during said term be used only for the following business and purposes, and for no other business or purposes whatever, viz., private dwelling for himself and his family.

It is mutually agreed and understood that the said lessee shall make no alterations in said premises without the consent of said lessor first had and obtained in writing under penalty of forfeiture of this lease and damages.

It is mutually agreed and understood that the said lessee shall keep the said premises in as good repair as the same are in at the commencement of said term, reasonable use and wear thereof and damage by accidental fire or other accidents, not happening through the neglect of said lessee, his agents or servants, not excepted.

It is mutually agreed and understood that the said lessee shall keep the outside of said premises in good repair and whole, and also the said lessee shall keep in good repair the inside thereof, and make all necessary repairs inside of said premises.

It is mutually agreed and understood that the said lessee shall keep the glass in the windows and doors in good repair and whole, damage by the elements not excepted.

It is mutually agreed and understood that during said term the said lessee shall pay all water rates assessed and levied against said premises for water used therein at the time such rates become due and payable.

It is mutually agreed and understood that the said lessee shall keep the water pipes, sewer pipes, gas pipes, drains and plumbing in said premises in good repair.

It is mutually agreed and understood that the said lessee shall keep the said premises in a clean and tenantable condition.

It is mutually agreed and understood that the said lessee shall pay for the sprinkling of the streets in front of or around said premises and all assessments and taxes levied therefor by virtue of any charter provision of the town aforesaid, and also for all

other taxes and assessments previous to — in every year, besides the fire insurance on said premises.

It is mutually agreed and understood that the said lessee shall obey all ordinances of said town in regard to the cleaning of streets, alleys and sidewalks in front of or adjoining said premises.

It is mutually agreed and understood that the said lessee shall obey all lawful orders, rules and regulations of the health officers, and all the health ordinances of said city or town.

It is mutually agreed and understood that the said lessor may, at reasonable and proper hours, enter and view said premises and make such alterations and repairs as may be necessary in lessor's opinion.

The said lessee does covenant and agree not to assign this lease nor any other right or privilege herein contained, nor let nor underlet said premises or any part thereof without the consent of said lessor in writing first had and obtained.

In case said premises shall be partially damaged by fire, the same shall be repaired as speedily as possible by and at the expense of said lessor, if the fire insurance money is sufficient for that purpose. In case the damage is so extensive as to render the premises untenable, the rent shall not cease until the same are repaired, nor at any other time. If the premises be so damaged that the owner shall decide to rebuild, said term shall not cease, the premises shall be surrendered, and the rent paid the same as before.

It is mutually agreed and understood that the said lessor may, within one month next preceding the expiration of said term, place the usual notice of "to let" or "for rent" (and giving the address of lessor or its agent) upon the walls, doors or windows of said premises, and the said notice shall remain thereon without hindrance or molestation, and be safely kept by lessee.

It is expressly agreed and understood that if the said lessee shall abandon or vacate said premises, or cease to regularly open, run and use the premises for the purposes herein stated before the expiration of said term, the said lessor shall be at liberty, at its option, to relet the same, and, if any rent be due or unpaid,

apply the money derived from such reletting to the rent due or to become due on this lease, and the said lessee shall remain liable for any deficiency and agrees to pay the same.

Provided always, and these presents are upon the express condition that if the said lessee does or shall neglect or fail to perform and observe any or either of the covenants or conditions herein contained, which on his part are to be performed, the said lessor lawfully may, immediately, or at any time thereafter, and while such neglect or default continues, and without further notice or demand, enter into or upon said premises and repossess the same as of its former estate and expel the said lessee and those claiming under him and remove his and their effects (forcibly if necessary), and without being held or deemed guilty in any manner of trespass, and upon entry as aforesaid this lease shall be determined, without prejudice to any remedies which might otherwise be used for arrears of rent or preceding breach of covenant; and such expulsion and removal, whether by the direct act of the lessor or its assigns or through the medium of legal proceedings for that purpose instituted, shall not affect the liability of said lessee or his representatives for the past rent due or future rent to accrue under this lease, but the same shall continue as if such removal or expulsion had not taken place.

It is agreed that no promise, agreement, inducement or representation of any kind was made or entered into by lessor or its agent except as expressly herein stated. Lessor shall not be liable for any injury, loss or damage to person or property on or on account of said premises or for any other claim, in any event and under any circumstances whatever, whether it be for labor, outlays or otherwise; and no alteration of or addition to these presents shall be valid unless it be in writing and subscribed by the lessor. And the said lessee expressly agrees to quit and deliver up said premises to the lessor peaceably and quietly, at the end of said term, by locking all windows and outside doors, and immediately thereafter delivering the keys thereof to the president or secretary of said company personally at its office.

In consideration of — (\$——) dollars and of said rents, the option is hereby given to lessee to purchase said premises on or before — if he has up to said day complied with all the

terms and conditions of this lease, and then only upon payment of — (\$—) dollars, and, in case lessee elects so to purchase, he to pay said \$— on said —, 19—, at the office of —.

It is agreed that time is of the essence of this option, and that said option shall never be construed to give said — any equity of redemption, or any right, title, interest or claim of any kind whatever in said premises, in case he fails to make either or any of said payments punctually within the time or times herein provided for, and to comply with any and all of the terms and conditions of the within lease; and it is further provided that his failure to make any or either of such payments punctually as herein stated, or to comply with any and all of the terms and conditions of the within lease, shall be held to be a complete surrender of all rights and privileges conferred by this option. Any mortgage on said premises shall be deducted from the last balance due on said price.

Lessee shall have the right on said —, 19—, if said option is still valid and binding, to pay only \$— cash instead of said \$—, and receive a land contract on said premises to be executed in duplicate by the parties hereto whereby he is to pay — dollars each on the first day of every month for — months, beginning —, 19—, and — (\$—) dollars on —, 19—, with — per cent. interest, payable quarterly from —, 19—, on all unpaid sums. Said lessee also to pay all taxes, assessments and fire insurance during the life of said land contract.

And the covenants, stipulations and agreements herein contained shall bind the parties mutually and their respective heirs, executors, administrators, representatives and assigns.

In witness whereof, the said company has caused these presents to be signed by its secretary, and said lessee has hereunto set his hand and seal the day and year first above written.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

Signed, sealed and delivered in presence of:

\_\_\_\_\_  
\_\_\_\_\_.

**5869. Building lease—General form.**

This indenture made and entered into this the — day of —, 19—, by and between — of the city of —, state of —, of the first part, and — of the city of —, state of —, of the second part, witnesseth:

That the said —, first party, for and in consideration of the rents, covenants and agreements hereafter reserved and contained, by and on the part and behalf of the said —, second party, his executors, administrators and assigns, to be paid, done and performed, hath demised, leased, set over and farm let, and by these presents doth demise, lease, set over and farm let, unto the said —, second party, his executors, administrators and assigns, all that piece or parcel of ground situate, lying and being on, etc., in said —, containing in breadth on the north side thereof —, and in depth on the east side thereof —, be the same more or less, and on the west side thereof —, east and from thence south —, and thence east, be the same more or less; together with the messuages or tenements, and other erections and buildings thereon, which the said —, second party, shall have full liberty to pull down, and take to and for his own use; which said piece or parcel of grounds abuts north on — aforesaid, south on gardens to some houses on the north side of —, belonging to the said —, first party, now on lease to —, east on buildings, etc., and west, etc., as more fully delineated and described in the plan or ground-plat thereof, in the margin of these presents; together with all erections and buildings to be erected and built thereon, and all ways, paths, passages, drains, water, watercourses, easements, profits, commodities and appurtenances whatsoever belonging and which shall belong to the said hereby demised premises, or any part or parcel thereof, to have and to hold the said piece or parcel of ground, messuages or tenements, erections, buildings and premises hereby demised, or intended so to be, with their and every of their appurtenances, unto the said —, second party, his executors, administrators and assigns, from the — day of — last past, before the date thereof, for and during and unto the full end and term of — years from thence next ensuing, and fully to be complete and ended (with right of renewal if desired); yielding and paying therefor, for



the first year of the said term hereby demised, the rent of — dollars on the last day thereof, and yielding and paying therefor, yearly and every year for and during the remaining years of the term hereby demised, unto the said —, first party, his heirs and assigns, the yearly rent or sum of \$— of lawful money of the United States, by half-yearly payments on the — and — in each year, by even and equal portions, the first payments thereof to begin and be made on the — day of —, 19—, the said several rents to be paid and payable from time to time on the several days aforesaid during the said term, free and clear of all rates, taxes, charges, assessments and payments whatsoever, taxed, charged, assessed or imposed upon the said hereby demised premises, or any part thereof, by any lawful authority howsoever, during the term hereby granted.

(Here may follow covenants by lessee to pay rent, to pay taxes, to erect houses, to keep the same in repair and not to use for purposes of offensive trades, to surrender at the end of the term, to keep the premises insured, to rebuild in case of fire, to permit the lessor to examine the premises; proviso for re-entry for a breach of any covenant on the part of the lessee, and by the lessor for quiet enjoyment of each of these covenants.)

In testimony whereof, etc.

## LEASES OF PERSONAL PROPERTY.

### 5875. Lease and license for the use of patented machinery.

Memorandum of agreement made this — day of —, 19—, between — of —, state of —, of the first part, and — of —, state of —, of the second part, witnesseth:

That the first party in consideration of — dollars, receipt of which is hereby acknowledged, paid by said second party, hereby grants unto the second party and its successors the exclusive right, license and privilege of using its patented — machinery and process for the manufacture of — in the following territory: — for — years from the date of this agreement, and also for the use of any improvements thereof by said first party, subject, however, to the conditions, stipulations and restrictions of this license hereinafter set out relating to the use of said machine and process.

The first party agrees to supply the second party with all said machines covered by its letters patent as the second party may be in need of from time to time, within — days after demand therefor in writing, at the cost of — dollars for each said machine by the first party to the second party and to furnish to the second party all necessary extra instruction in the installation and use of said machine, at the actual cost of so doing.

The right of the second party and its successors to use said machines in said above-described territory shall be indivisible, unassignable and inalienable, and it is hereby agreed and understood that none of the said machines shall be sublet, mortgaged or otherwise disposed of to any person, firm or corporation, within or without said territory, during the continuance of this license, without the written consent of the first party, and it is also hereby agreed that the sale of the goods manufactured by said machines by the licensee herein shall be restricted to said territory, but the second party may authorize within said territory as many plants for the manufacturing of said goods by said machines as the second party may deem necessary for the development and carrying on of said business.

The second party agrees at all times hereafter to admit the validity of the letters patent for said machines, and that it will not infringe the same or test the validity of the scope of the claims thereof, or of the title of the first party thereto, and that it will not aid or encourage others in so doing and will not manufacture or cause to be manufactured any of said machines without the consent of the first party.

It is also further agreed by the parties hereto that if the second party should violate any of the provisions of this license, then the license and privilege hereby conveyed to the second party shall cease and shall immediately revert to the first party, with the same force and effect as if this agreement had not been made.

The first party agrees at its own cost to defend and protect the second party in the exclusive use of said machines in said territory against all licensees and others, and to take such steps as may be necessary in law and equity to protect the said rights to the exclusive use of said machines in said territory for the time herein granted; and upon the failure of the first party to so protect the second party in the use of said machines, the second party may proceed to protect itself in the use thereof and collect the cost thereof from the first party, but before so doing the second party agrees to give the first party — days' notice of its intention so to do. The first party hereby warrants its title to the United States patent for — number —, issued to — on the — day of —, 19—.

In witness whereof, the parties to this agreement have caused the same to be signed by their officers hereunto duly authorized, and their corporate seals to be affixed, this the day and year first above written.

(Seal.)

———— Company,  
By ———, President.

Attest: ———, Secretary.

1. See ante, vol. 2, §§ 838-840.

#### 5876. Contract for lease of machinery.

This agreement, entered into this — day of —, between the — Company of —, party of the first part, and — of — and — of —, parties of the second part, witnesseth:

The first party, in consideration of —, receipt of which is hereby acknowledged, and other valuable considerations, received to its full satisfaction of the parties of the second part, does hereby lease and let to the second parties, their heirs, executors and assigns all the machinery of every name and nature now controlled by or belonging to the party of the first part by virtue of a lease from the parties of the second part of even date herewith, situated in the buildings of the parties of the second part at —, or elsewhere, used by them or others for the manufacture of — or —, for the term of — from and after date hereof, with the right in the second parties to extend said lease for one year at a time until the expiration of five years, for the purpose of manufacturing anything whatever, except —; it being the intention hereof to permit the parties of the second part, their heirs, executors or assigns to use said machinery for any purpose, except the manufacture of said —.

1. Clark v. Needham, 125 Mich. 86.

**5877. Contract for lease of machinery—Another form.**

This agreement entered into this — day of —, 19—, between — of —, as party of the first part, and the — of —, —, as party of the second part, witnesseth:

The first party, in consideration of the payments to be made to him as hereinafter stated by the second party, does hereby lease and let to the said second party, his heirs, executors and assigns all of the machinery of every name and nature now used or belonging to the party of the first part, in his buildings at —, —, or elsewhere, used by him or others for the manufacture of —, for the term of — from and after date hereof, with the rights in second party to extend said time one year at a time until the expiration of — years, if the second party gives to first party — days' notice of his intention to extend the time for another year, before the expiration of the current year.

In consideration of the above and the agreement hereinafter set forth the second party agrees to pay to the first party the sum of — dollars per year, payable — dollars in cash, and — dollars each month in advance.

As a part consideration of the above, and the payment of the sum aforesaid by the second party the first party agrees and does hereby bind himself not to manufacture or sell, or in any way engage in the manufacture or sale of said — or — during the continuance of this lease, except that he may sell to and manufacture for the — of — for their own use.

\_\_\_\_\_.

1. Clark v. Needham, 125 Mich. 86.

### 5878. Agreement to rent an automobile.

This agreement, made this — day of —, 19—, between — of —, hereinafter called the owner, and — of —, hereinafter called lessee, witnesseth:

Whereas said owner has a garage and automobiles, and said lessee is desirous to rent a six-passenger machine; now, therefore, said owner agrees to rent to said lessee automobile No. —, for a period of — months from date, in consideration of the payment by said lessee of the sum of — dollars per month, in advance, during the term of said lease.

Said owner agrees to store, keep and take care of said machine at his garage at No. — street, in the city of —; to furnish the same with gasoline, and to deliver it at the residence of said lessee, or such other place as he may direct, upon call, and to conduct it back to said garage after use. Said lessee agrees to run and operate said machine in a careful, prudent and cautious manner; not to run it at excessive speed, and, at the end of said term, to restore it to said owner in as good condition as it was at the date of this contract.

In case it shall be necessary to make any repairs upon said machine, due to any other cause than that of the ordinary wear and tear, the same shall be charged upon the monthly bill of said lessee, and paid by him. If said lessee shall, at any time, fail to pay his bills when the same shall become due, or shall refuse to pay for repairs as herein stipulated, this contract shall be declared forfeit.

In witness, etc.

1. See ante, vol. 4, § 3071.

**5879. Agreement for letting furniture.**

Agreement made the — day of —, between — of —, hereinafter called the lessor, of the one part, and — of —, hereinafter called the lessee, of the other part.

The said lessor shall let to the said lessee the furniture, fixtures, goods and effects set forth in the schedule or list hereunto annexed (which are now in, upon or about the house and premises situate, etc., in the occupation of the said lessee, but the property of the said lessor), at the rent of — dollars per calendar month, and so in proportion for any less period than a month, to be paid by the said lessee to the said lessor on the — day of each and every month, the first monthly payment thereof to be made on the — day of — next.

The said lessee hereby agrees with the said lessor, at all times during the said letting of the said effects, to keep the same in a good and perfect state of repair and condition in every respect, and insured against fire to their full value in some respectable office, and, whenever required, to produce the policy of such insurance and the receipt for the last premium to the said lessor, and also to replace such of the said effects as may be broken, destroyed or damaged (by whatsoever means) with other articles of equal value, and not to remove the said effects, or any part thereof, from the said house and premises, nor to underlet, lend or part with the possession of the same, either directly or indirectly, to any person or persons whomsoever without the previous written consent of the said lessor.

Provided always, that the said lessor may at any time immediately upon any breach of any such agreement on the part of the said lessee, or upon giving one month's previous notice to the said lessee, put an end to the said letting, and may thereupon enter upon the said premises or any part thereof, and remove and carry away the said effects.

In witness, etc.

1. See ante, vol. 4, § 3071.

**5880. Hire of furniture.**

Agreement made the — day of — between — of —, hereinafter called the owner of the one part, and — of —, hereinafter called the hirer of the other part.

The owner agrees to let and the hirer agrees to hire the furniture described in the schedule hereto annexed for the period of — from the — day of —, the said furniture to be delivered by the owner at the house of the hirer at — on the day aforesaid.

The hirer shall pay to the owner a rent of — dollars for each calendar month of the term, payable on the — day of each month, the first payment to be made on the — day of — next

The hirer shall during said term keep said furniture in a good state of repair, and shall at the end of said term replace such furniture as may be broken or damaged or lost.

The hirer shall during said term keep the said furniture insured against fire in the joint names of the owner and the hirer, in the sum of — dollars, in an insurance company approved by the owner.

The hirer shall not during the said term remove the said furniture from the house, or suffer the same or any part of it to go out of his possession, except with the written consent of the owner.

The owner or his agent may at all reasonable times enter the said house for the purpose of viewing the condition of said furniture.

In witness whereof, etc.

1. See also, *BILLS OF SALE, AGREEMENTS TO SELL and CONDITIONAL SALES*, ante, 5402.

2. See ante, vol. 4, § 3071.

#### 5881. Lease for sewing machine.

This certifies that I, —, now residing at No. — street, in the city of —, state of —, have rented and received from the — manufacturing company, one — sewing-machine, style —, and No. —, with the appurtenances belonging thereto, all in good order, and valued at \$—, which I am to use with care, and keep in like good order, and for the use of which I agree to pay rent as follows: \$— cash, old machine, \$— on the delivery of this agreement, the receipt whereof is hereby acknowledged, and accepted as payment for the rent of

the first month only, and then at the rate of \$—— per month, payable in advance on the —— day of each month hereafter for twelve months, at its agency in —— without notice or demand. But if default shall be made in either of said payments, or if I shall sell, or offer to sell, remove, or attempt to remove the said machine from my aforesaid residence without the written consent of said company, then and in that case, or at the expiration of the time for which the machine is rented I will return and deliver the same to the said company, in good order, save reasonable wear, and the said company or its agents may resume actual possession thereof; and I hereby authorize and empower the said company, or its agents, to enter the premises wherever said machine may be and take and carry the same away, hereby waiving any action for trespass or damage therefor and disclaiming any right for resistance thereto; and also waive all right of homestead or other exemptions, under the laws of said state as against this obligation.

Witness my hand and seal this —— day of ——, 19—.



**LICENSES.****5885. Peddler's license.**

Pursuant to a resolution passed by the city council of city of —, state of —, a license to peddle goods and merchandise in the city of — is hereby granted to —, this license to continue in force until the — day of —, unless sooner revoked by the mayor or city council.

In testimony whereof, etc.

1. See ante, vol. 1, § 267.

**5886. Cart driver's license.**

Know all persons by these presents that — is licensed to act as driver of a public cart or express in the city of —, said licensee to be subject to all rules and ordinances of said city as now exist and as shall be from time to time adopted and passed by said city council, said license to continue in force until the — day of —, 19—, unless sooner revoked.

In testimony whereof, etc.

**5887. Junk dealer's license.**

No. —.

Pursuant to resolution of the city council of the city of —, state of —, passed on the — day of —, 19—, and approved by the mayor of said city, on the — day of —, 19—, a license is hereby granted unto — to keep a junk shop at —; this license to continue in force until the — day of —, unless sooner revoked for cause.

In testimony whereof, etc.

**5888. Auctioneer's license.**

No. —.

Pursuant of resolution of the city council of the city of —, state of —, passed the — day of —, 19—, a license as an auctioneer in and for the city of —, state of —, is hereby granted unto —, which license shall continue in force until

the — day of —, 19—, unless sooner revoked by the mayor or council of said city for cause.

In testimony whereof, etc.

**5889. License to operate show on fair ground.**

Indianapolis, Ind., Sept. 1, 19—.

In consideration of one hundred dollars, and the agreements hereafter contained, the Indiana State Agricultural Society, as the first party, hereby grants unto — company, the second party, the right, license and privilege of occupying during the state fair, from September — to —, inclusive, 19—, on the state fair grounds, at Indianapolis, Marion county, Indiana, the following described lot or parcel of ground within the state fair grounds, to wit: (here describe) to be used for a vaudeville show.

It is expressly understood and agreed: First, that no intoxicating liquors, or beverages containing alcohol in any form, shall be kept, sold or given away on the premises covered by this license;

Second, that the second party shall conduct the business for which this privilege is granted in a quiet and orderly manner;

Third, the second party also agrees to keep the surroundings in and about the premises above described clean and free from waste and rubbish;

Fourth, it is also an express condition of this privilege that all booths, stalls or other structures erected by the party of the second part will by it be removed promptly after the closing date of the fair, and no booth, stall or other structure is to be removed until after nine o'clock on the closing night of the fair;

Fifth, the second party hereby expressly agrees to pay the amount above specified for said privilege in two equal payments, one-half when the privilege is granted, and one-half on or before Wednesday, September —, and until the same is fully paid the first party shall have a lien on all the personal property of the second party which may be on the Indiana state fair grounds during state fair, with the right to take possession of and maintain same until said amount is fully paid;

Sixth, that the right to sublet any part of said premises is not conveyed by this privilege, without the consent of the first party being obtained;

Seventh, the first party may revoke the privilege hereby granted at any time if the second party violates any of the conditions herein contained or any of the by-laws of the first party, or any of the laws of the state of Indiana.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_

#### 5890. Lease of privilege on fair ground.

— State Board of Agriculture.

\$—.

This agreement, made and entered into this — day of —, 19—, by and between the — state board of agriculture, party of the first part, and — of —, county of —, and state of —, party of the second part, witnesseth:

That whereas, the party of the second part desires to lease from said party of the first part, and said party of the first part desires to lease unto said party of the second part, certain rights and privileges, and certain space for conducting said privileges upon and within the — state fair grounds, at —, —, during the — state fair, to be held at —, —, beginning on the day of —, 19—, and ending on the — day of —, 19—.

Now, therefore, it is agreed by and between the parties hereto that the party of the first part has leased and let unto the party of the second part the following privilege only, to wit: —, said privilege so leased and let to be conducted upon the premises described as follows: —, as the same may appear by the privilege plat of said party of the first part, which plat is made a part hereof by reference, for the term of — days of said — state fair as aforesaid, in consideration of the payment by said second party to said first party of the agreed and reasonable compensation therefor of \$— and of the following covenants and agreements made by the party of the second part, and to be by him kept and performed:

1. That he will pay to said party of the first part, for any privilege amount-

ing to \$—— or less, the full amount thereof upon execution of contract. Where the amount of contract exceeds \$——, payments thereof to be made as follows: One-half thereof when contract is signed; and the balance thereof on or before —— A. M. of Saturday before the opening day of the said —— state fair.

2. Any representative of the party of the first part shall have access to said premises at all times.

3. That he will conduct his business in a quiet and orderly manner, keep his place neat and clean, deposit all rubbish, garbage, tin cans, paper, salt water, etc., in the garbage receptacles placed by said party of the first part adjacent to said concession plot; that he will keep his ground in front and in the rear of said concession free from all rubbish.

4. All buildings, tents or enclosures put up under the terms of this lease must have the approval of the first party.

5. That the said second party will not be permitted to occupy said plot or space contracted for by this agreement before the —— day of —— next preceding the opening day of the fair.

6. That the privilege hereby granted will be conducted according to the rules and regulations of the —— state board of agriculture and of the laws of the state of ——, and without infringement upon the rights or privileges of others, and will not handle or sell any commodity or transact any business whatsoever for which an exclusive right has been given, or engage in any other business whatsoever upon and within said premises and fair grounds, except that which is herein expressly stipulated and contracted for, and will confine said transactions to the space and privilege provided herein. A list of exclusive privileges is printed on the reverse side of this agreement and is made a part hereof by reference.

7. That no hop ale, malt mead or beer or intoxicant of any kind shall be kept or sold by himself or employés within said leased premises or upon said fair grounds, and that the party of the first part shall have the right and privilege of stopping the sale of any article of drink being sold thereon or therein by said party of the second part or his employés, which, in the judgment of the party of the first part, is considered detrimental to the said state fair.

8. That he will not conduct or permit to be conducted, on the space hereby leased, any stand, show, amusement or exhibition of any character which does not meet with the approval and endorsement of said first party.

9. That the said second party shall cause to be posted in a conspicuous manner at the front or entrance to said place of business a sign showing the price to be charged for meals, lunches, drinks, or other articles of food to be sold under this lease; the size of said sign, manner and place of posting to be approved by said first party.

10. That he will not sell, exchange or barter, or permit his employés to sell, exchange or barter, any privilege ticket, badge, license, or tickets of admission to the grounds issued to said second party or his employés hereunder.

11. All concessioners and employés in stands and dining halls to have a uniform consisting of a white jacket coat and cap for males, and white aprons for females; said uniform to be kept neat and clean.

12. The violation of any of the terms and agreements hereof shall, at the election of the party of the first part, cause the whole amount of this contract to become due and work a revocation and forfeiture of all rights and privileges herein granted to said second party, and in the event of such breach by said second party and such election by said first party, any and all sums paid or contracted to be paid under this contract to said first party shall be and become the property of said first party as liquidated damages for said breach.

13. This contract or the privileges granted herein, or any part thereof, cannot be assigned or otherwise disposed of without the written consent of said party of the first part.

14. At the expiration of this contract to surrender possession of said premises to the party of the first part without further notice to quit, and in as good repair as the same are now in or may hereafter be placed, unavoidable wear or damage by fire caused without the fault of the party of the second part, excepted.

15. To give to the party of the first part a lien upon all property being kept, used or situated upon said leased premises or upon said fair grounds, whether such property be exempt or not, for the rent or privilege money to be paid under this contract, and for any damages sustained for any breach thereof; and that said party of the first part shall have the right to distrain the same without process of law, and appropriate said property to the use of said first party to satisfy all of its claims against said second party.

16. That the second party agrees to pay the regular rates charged by said first party for all badges or admission tickets issued to him on account of this privilege.

This permit does not allow any of the following, which are sold exclusive, and none of the following goods shall be offered for sale or exposed to view within the space assigned in this contract, or orders taken for, or deliveries made by any wagon having a permit under this contract, viz.:

1. Meat of any description.
2. Cigars, popcorn in any form, candy or confectionery to concessionaires.
3. Bakery products to concessionaires.
4. Ice cream, cream or milk to concessionaires.
5. Soft drinks to concessionaires.
6. Ice to concessionaires.
7. Toy balloons, toy whistles, return balls, toy and riding whips.
8. Feed for live stock, including cabbage for sheep.
9. Coal oil or gasoline.
10. Selling or giving away any score card of the races.
11. Soliciting or accepting laundry.
12. Soliciting or accepting any orders for sign painting.
13. Checking any package, either free or for pay.
14. No peddling of any description shall be allowed under this contract.

In witness whereof, the parties hereto have caused these pres-

ents to be executed at —, —, the day and date first above written.

— State Board of Agriculture,  
 By —, —,  
 Superintendent of Privileges.  
 —,  
 Concessionaire.  
 \$—.

### 5891. Lease of space on fair ground.

This indenture of lease, made this — day of —, 19—, between the — state board of agriculture and —, witnesseth:

That in consideration of the sum of — dollars (\$—), to be paid by the said — as aforesaid, to the — state board of agriculture prior to —, 19—, the said — state board of agriculture hereby leases to the said lessees above named, for —, 19—, between the hours of — and —, the right to occupy and use the — state fair grounds, adjacent to the city of — (except the exhibition and administration buildings, barns, grand-stand, race tracks, and all buildings on said grounds in use by said board, or not owned by said — state board of agriculture), for the purpose of a — and public gathering of the —.

The terms and conditions of this lease are as follows:

No intoxicating liquors shall be sold, bartered or given away; nor shall any gambling or games of chance in any form whatever be permitted, nor shall any lewd or immoral or unlawful acts be done or permitted upon the premises leased.

That said lessees will, at their own expense, properly police said grounds inside and outside with not less than — uniformed policemen of the police force of — during the time it is occupied by them.

All members and officers of the — state board of agriculture and all laborers and persons in the employ of said board, or of its contractors, or subcontractors, and all persons connected with the experimental station, and also all persons having horses in training on said grounds and their assistants shall be admitted free to the grounds and shall be permitted to pursue their ordi-

nary avocations and employments on the premises hereby leased without any disturbance or hindrance whatsoever.

The keepers of the boarding-houses and all other persons holding privileges on said premises shall have the right to exercise the same privileges which have been granted to them by the said — state board of agriculture or its proper officer or officers, and to publicly sell at their regular place of business, to any person who may be upon said grounds, the commodities which they may be so privileged to sell.

That said lessees will promptly repair or pay for all damage done to the grounds, trees, fences and buildings or other property while the grounds are in their control.

The lessees agree that any violation of this lease on their part shall immediately forfeit their right to the further use of said grounds, and the board, by its officers or agents, shall have the right to immediately remove said lessees therefrom without any notice or legal process whatever.

In witness whereof, the said — state board of agriculture has caused its corporate name to be signed and seal affixed by its officers thereunto duly authorized, and the said — ha— hereunto signed — name— on the date first above written.

— State Board of Agriculture,

By \_\_\_\_\_,  
Secretary.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

#### 5892. License to lay pipes across real property.

In consideration of — dollars, the receipt whereof is hereby acknowledged, I, — of —, do hereby grant to the — company, its successors and assigns the right to lay, maintain, operate, repair and remove the following pipes (insert description) through and over the following described real estate, to wit: (here describe property).

The said pipes shall be laid according to the following course (here insert description of course), and shall be dug down at least — feet. It is especially provided, however, that all dam-

age to crops, fences and the like caused by laying, operating or removing the same shall be paid by said company.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

### 5893. License or agreement for right of burial.

This agreement, made this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between \_\_\_\_ cemetery association, party of the first part, and \_\_\_\_, party of the second part, witnesseth:

That in consideration of the sum of \_\_\_\_ dollars in hand paid by second party to first party, said first party does hereby give and grant unto second party the exclusive right of burial for \_\_\_\_ and the persons to be named by \_\_\_\_, or in event of the failure of said second party's nomination, to his heirs, subject to all conditions and limitations, and with the privileges specified in the rules and regulations of said first party now in existence or which may hereafter be lawfully prescribed in and upon that certain parcel of land situated in \_\_\_\_ county, in the state of \_\_\_\_, described and designated on the plat of said cemetery, as now laid out as \_\_\_\_ lot No. \_\_\_\_, in section \_\_\_\_, containing \_\_\_\_ superficial feet.

In witness whereof, said first party has caused these presents to be sealed with its corporate seal, signed by its president and countersigned by its secretary, this \_\_\_\_ day of \_\_\_\_, 19\_\_.

\_\_\_\_\_.

(Acknowledgment.)



**MANUFACTURING CONTRACTS.****5895. General form.**

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part,

Witnesseth: That in consideration of the stipulations and agreements hereinafter specified, the said first party shall, at his own cost and expense, make, construct and manufacture — in accordance with the designs, plans and specifications hereunto attached and made part hereof, and that he shall use material of the highest grade in the construction of said —, and the workmanship shall be of the best quality, and further he shall deliver — unto second party at —, freight prepaid — months from date.

That in consideration therefor said second party shall pay to the first party for said — at the rate of — dollars per — upon delivery.

In witness whereof, the parties hereunto have set their hands and seals this day and year above written.

**5896. Agreement to manufacture certain goods.**

This agreement made this — day of —, 19—, between — of — (the manufacturer), and — of — (the purchaser), witnesseth:

Said manufacturer shall, at his own expense, manufacture (name article and number or amount), of the same quality of material and workmanship, and in all other respects according to the description, design, plans and specifications hereunto attached, or according to sample, and shall deliver the same unto said purchaser at —, freight prepaid, two months from date, in consideration that said purchaser shall pay said manufacturer for the same at the rate of — dollars per — upon delivery. All articles not manufactured agreeably to said description, design, plans and specifications may be rejected by said purchaser, and shall be taken back by said manufacturer, who shall make

instead a quantity equal to the number rejected by said purchaser according to the provisions of this agreement.

In witness etc.

1. See also, BUILDING CONTRACTS, ante, 5535.

**5897. Agreement to manufacture certain articles.**

Agreement made this — day of —, 19—, by and between —, of city of —, state of —, party of the first part, and —, of city of —, of state of —, party of the second part, witnesseth:

That the said party of the first part for the consideration herein named covenants and agrees that he will at his own charge and expense make and construct for the party of the second part (here describe the articles to be made), the same to be made of the same kind and quality of materials as shown by pattern agreed upon by said parties (here describe or identify said pattern) and to deliver said articles at — within — months from the date of this agreement.

And the party of the first part, in consideration thereof agrees to pay to the party of the first part the sum of — dollars in instalments as follows: (here designate manner of payment).

And it is hereby further agreed that if any of said articles shall not be made in accordance with said pattern and for that reason shall be rejected by the second party, the first party agrees to take back such articles as shall be rejected as aforesaid and deliver to the second party a like quantity of said articles of the quality and make as shown by said pattern.

In witness whereof, etc.

**5898. Contract to manufacture patented articles.**

Articles of agreement made and concluded this — day of —, —, by and between — of — township, in the county of — and state of —, party of the first part, and — and —, of —, county and state aforesaid, parties of the second part, witnesseth:

In consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, and the further considerations herein-after named, the party of the first part agrees as follows: To

surrender all claims under and by virtue of a certain contract between the above-named parties, dated the —— day of ——; to turn over to said second parties all right, title and interest in and to all —— inventions and devices heretofore invented by him, and to sign and execute proper and legal applications for patents on the same, and assignments thereof to said second parties, except as to such as are already so disposed of; to continue to use his best talent, and continuously exert himself to the best of his ability, to invent further improvements thereon and other analogous devices, which said devices and improvements when so invented, he will in like manner make, sign and execute applications for patents thereon, and also in like manner assign the same to said second parties.

In further consideration whereof, the second parties agree to pay the said first party the sum of —— (——) each and every week during the continuance of this contract, payable weekly. Said second parties further agree to manufacture, or cause to be manufactured, either by themselves or others, such of said —— devices already acquired or to be acquired by them as they may deem advisable or profitable; and this contract shall continue so long as such manufacture shall embody any device covered by any patent so obtained and assigned, or to be obtained and assigned.

Said second parties further agree that, in event of their effecting a sale of said patents or a license under the same, their assigns or licensees shall enter in a good and sufficient contract to carry out this contract with said first party.

It is further mutually agreed that in the event said second parties or their assigns should altogether cease and discontinue said manufacture, and desire to discontinue the services of said first party and the payment of \$—— per week, they may do so by proper written notice, and assigning, by proper legal writing, a one-third interest in all patents on said —— devices issued or to be issued to said first party, and assigned by him as aforesaid; but it is expressly understood that no such discontinuance shall occur so long as any device or devices are manufactured under said patents as aforesaid.

It is also further mutually agreed that, in the event of the death or disability of said first party, said payment of \$—— per week shall be continued and paid to his wife, ——, or such other beneficiary as said first party may direct, subject to like conditions as to sale or discontinuance as aforesaid.

In presence of

\_\_\_\_\_  
\_\_\_\_\_.

1. Raymond v. White, 119 Mich. 438.

### 5899. Notice of discontinuance of manufacture of patented articles.

To ——.

Sir: Please take notice that we have decided to cease and discontinue, and have ceased and discontinued, the manufacture and causing the manufacture of —— and —— inventions and devices under the contract between you and ourselves of date ——, ——, and hereby notify you that we have discontinued your services provided for in said contract, and, to that end, herewith hand you assignments, executed by the proper persons, of an undivided one-third interest in all patents which have been issued to us or our assigns under the terms of said contract.

Witness our hands and seals, this —— day of ——, 19——.

\_\_\_\_\_  
\_\_\_\_\_.

### 5900. Contracts for the manufacture of machines and engines.

This agreement made and entered into this —— day of ——, 19——, by and between —— of the city of ——, state of ——, in the firm name of ——, parties of the first part, and —— of the city of ——, state of ——, party of the second part, witnesseth:

That in consideration of the mutual promises and agreements herein contained, the parties hereto agree:

That the parties of the first part will build, construct and complete for the party of the second part a ——, in accordance with the specifications annexed hereto and made a part hereof, for and

in consideration of the sum of — dollars to be paid therefor by the party of the second part, in manner and form as hereinafter provided.

The parties of the first part agree to furnish all of the materials for the construction of said —, except such as by the express terms of the specification are to be furnished by the party of the second part, said — to be constructed of materials of the best quality and in the most workmanlike manner; and in all particulars not provided for by the specifications annexed hereto, the said — shall be constructed of such materials and in such proportions and manner as the superintendent of construction shall direct.

In consideration of the faithful performance by the parties of the first part of all things by them herein agreed to be performed, the party of the second part agrees to pay to the parties of the first part, for construction of the said —, the sum of — dollars in instalments as the work progresses; the first instalment of — dollars to be paid when —; the other payments to be made at the end of each calendar month, and such payments to be in the proportion that the work done and materials furnished bear to the full performance of the construction work and the materials to be furnished by the parties of the first part.

The parties hereunto mutually agree that — shall superintend the construction of said —.

In witness whereof, etc.

#### NOTICE FOR BIDS.

To builders and others: Persons willing to contract for the erection of a — at —, in the county of —, may inspect the drawings and specifications at — from the day of — until the — day of —, 19—. Offers will not be received later than — o'clock on the last-mentioned date. The advertisers do not bind themselves to take the lowest offer; nor will any bid be accepted unless the character, means and sureties of the persons offering be satisfactory, and the amount of the offer within (a certain sum). All further particulars or explanations will be given by the architect at his office. (Signed.)

1. See ante, vol. 4, § 3636.

**5901. Contract to manufacture lumber.**

Memorandum of agreement made this — day of —, 19—, between — of —, —, party of the first part, and —, party of the second part, witnesseth:

Whereas, said first party owns about — million feet, board measure, of white pine saw-logs, now in — river, and its tributaries, marked —; and whereas, said second party owns a mill in —; Now, therefore, it is agreed that said first party turn over to said second party the above-named logs, delivered in the — boom, and said second party shall convert the same into lumber, dock and sell the lumber manufactured therefrom in good and workmanlike manner, so as to get the greatest return therefrom, shall pay boomage, inspection, the insurance thereon, and guarantee the collection of paper received for said lumber. The proceeds of said lumber shall be divided between said parties as follows: The amount paid for boomage, inspection, and insurance shall first be deducted from said proceeds, and first party shall receive — dollars and — cents (\$—) per thousand feet for shipping culls, — for common, and — dollars and — cents for uppers; and said second party shall receive — dollars and — cents for selling, sawing and guaranteeing sale:

Provided, always, that if the net proceeds shall not be sufficient, or shall be more than sufficient, to pay the said parties the amount due as above mentioned, they shall receive in the same proportion that said amounts bear to the amount of said net proceeds. And it is expressly agreed that said first party shall take the mill-culls or nonshipping lumber manufactured from said logs, and shall pay unto said second party — dollars and — cents per thousand feet for sawing the same.

And whereas said second party has given to said first party four promissory notes for — dollars each, payable, respectively, in — and — months from this day: Now, therefore, it is agreed that the said second party shall retain the said first party's proportion of the net proceeds of said lumber until they shall have retained the said sum of — dollars. And it is further agreed that the interest shall be adjusted between the said parties at — per cent. per annum; that is to say, if the said second party shall

pay any of said notes before receiving sufficient funds from said first party's proportion of the net proceeds of lumber sales to meet the same, he shall charge said first party interest until sufficient funds shall have been received; and, if said second party shall receive funds from said first party's proportion of net proceeds before the maturing of said notes, he shall pay interest thereon to the said first party until the maturing of said notes.

In testimony whereof, the parties have hereto set their hands.

In the presence of —.

1. Sample v. Pickard, 74 Mich. 417.

### 5902. Contract to manufacture lumber—Another form.

Agreement between — and —. This agreement, made this — day of —, 19—, between — of —, parties of the first part, and the —, —, —, —, parties of the second part, witnesseth:

The first parties hereby sell and agree to sell to the second party all the logs cut and banked on the — river, in town — north, range — west, and marked —, and also agree to sell and deliver to the second party all the logs they shall cut and bank as aforesaid, during the present winter, to be marked "—."

The above logs have been cut and are to be cut on lands bought by the first parties of —, of —, and now held under contract of purchase.

The first parties hereby further sell and deliver to the second parties all the logs now on the bank and marked "—," being all the logs so marked and cut by — and —, on the — river, and agree to sell and deliver to the second parties all the logs that shall be cut on the — river this winter by said — and —, and all the logs to be cut shall be marked "—."

The first parties further hereby sell to the second parties all the logs now cut and banked on the — river, in town — north, of range — east, by — and marked "—," and agree to sell and deliver to the second parties all the logs that shall be cut this winter by said — in the last-mentioned town, the logs so to be cut to be marked "—."

The first parties further agree that all the said logs shall be of the usual lengths for making pine lumber, shall be well manufactured, and shall scale at least — feet, and they guarantee that all said logs cut and to be cut shall make lumber that will run at least — per cent. of the three upper qualities; that as early in the spring of this year as the water will permit, they will run to the — boom and deliver in the boom of the mill of the second party, as fast as they are wanted for sawing, at least — feet of the quality above mentioned.

It is mutually understood and agreed that the undivided one-half of the logs now cut shall be and become the absolute property of the second party when this contract is signed, and that the undivided one-half of the said logs to be cut and banked shall be and become the absolute property of the second party as and when the same are banked and marked as aforesaid; and that the second party shall have the exclusive possession and right of possession of and lien on all said logs cut and to be cut and banked, and of the lumber made therefrom, until said lumber is shipped, as hereinafter provided; and that neither party will sell, use, dispose of, mortgage, pledge or in any manner encumber said logs or any part thereof, or contract so to do, except in the manner in this contract mentioned, and that from the purchase-price, as hereinafter mentioned, there shall be deducted, to be paid to the second parties, or retained by them out of the proceeds of all the lumber, — cents per thousand feet for each one per cent. that all of said logs shall fall short of the quality hereinbefore mentioned and guaranteed; and there shall be paid to the first parties, in addition to — a thousand, — cents per thousand feet for every one per cent. that all said logs shall exceed the quality above guaranteed.

The second parties agree to take said logs at their said mill boom, and manufacture the same into lumber in a workmanlike manner and so as to be of the most profit to both parties, to pile said lumber on their mill dock in a good and workmanlike manner and convenient for shipment.

They further agree to ship all the lumber made from said logs as fast as practicable to — and there pile and keep the same



for sale in the most economical manner, the lumber to be shipped in — in the name of the second parties: provided, that the sales of lumber may be made from the yard or float, as may be the most profitable.

The second parties further agree to pay to the first parties for one-half the logs above sold and agreed to be delivered, — dollars per thousand feet, with the addition or deduction for variation in quality, as above mentioned; and as said second parties have made certain advances on said logs, and more advances are required to enable the first parties to carry out their part of this agreement, the second parties hereby agree to advance to the first parties, from time to time as required by them for the purpose of getting out and delivering said logs in said mill boom, for payment on the said land contracted from said —, on paying said — any lien he may have on said logs by his said land contract, or permission given to cut logs: Provided, The advances hereinafter to be made shall not exceed in all the sum of — dollars on — feet of logs to be hereinafter put in the river, or in that proportion as fast as said logs are put in.

It is further understood and agreed that when said lumber shall reach —, the first parties may and shall have the right to dispose of their interest in the lumber at —, or any part thereof, subject to the lien thereon of the second party, which is hereby given for the fulfilment of this contract, saw bill, advance and liabilities incurred by or for rents or other acts or expenses to carry out the manufacture, shipment or sale of the lumber under this contract, and they accounting and paying over to said second parties any sum found due them on final settlement under this contract. It is further mutually agreed that the lumber from said logs shall be inspected and measured as and when shipped, and the inspection bills shall be the basis of settlement, and binding and conclusive upon both parties, both as to quality and quantity.

The proceeds of the sales of said lumber shall be disposed of as follows: First shall be deducted the inspection, freight, insurance, dockage, commissions and other charges actually and necessarily incurred and paid in the shipping and selling of

said lumber. Then there shall be paid to the second parties all advances heretofore made, or that shall be made by the second parties, with ten per cent. interest from the time the same were made respectively to the time of settlement. Then there shall be paid to the first parties — dollars per thousand on one-half of said lumber, with the addition to or deduction from the sum provided for above in case of variation from — of the three upper qualities. Then there shall be paid to the second parties the sum of — dollars per thousand feet on one-half of the lumber sawed, for saw bill, and the balance of the proceeds, if any, shall be divided equally between the parties, share and share alike: provided, that if there shall not be enough of the proceeds to make the payments above specified, then the deficiency shall come out of the payment for one-half of the logs and payment for saw bill in proportion to the sum above mentioned.

In witness whereof, the parties have hereunto set their hands the day and year first above written.

1. Hersey v. Huron Salt & Lumber Mfg. Co., 27 Mich. 489.

### 5903. Contract to manufacture brick.

This agreement made and entered into this — day of —, 19—, by and between — of —, state of —, of the first part, and — of —, state of —, of the second part, witnesseth:

That the first party for the consideration herein stated, agrees with the second party that the first party will, within six months from the date hereof, at his own expense and of a good and sufficient material make or cause to be made in the county of —, state of —, for the second party, — thousand brick well burned and of the following dimensions: — and agrees to deliver the same at the expense of the first party from time to time and in such quantities at — of the second party as the same shall be demanded, or as the same shall be needed for building purposes at said places.

In consideration of the promises and agreement of the first party herein set forth the second party promises and agrees with the first party that he will provide the places and the earth where and out of which said brick shall be made by said first

party, and to pay the first party — dollars per thousand for said brick made and delivered as aforesaid, said payment to be made in instalments as follows: —, after the brick have been inspected and accepted by the first party as having been made in compliance with this agreement or by some one by him duly authorized so to do.

In witness whereof, etc.

**MINING AND MINERAL CONTRACTS.****5905. Agreement to mine oil and gas on specified payments and a royalty.**

This indenture, made the — day of —, 19—, between — of —, county of —, state of —, grantor, and — of —, grantee, witnesseth, that the grantor, in consideration of — dollars, the receipt of the same being hereby acknowledged, does grant and convey unto the said grantee, all the oil and gas in and under the following described tract of land, situate in —, county of —, state of —, bounded and described as follows (here insert description of premises), containing — acres, more or less, being the same premises conveyed to grantor by deed, recorded in book —, page —, of the records of said county, together with the exclusive right unto the grantee to operate and drill for oil and gas, to lay and maintain pipe lines, to erect and maintain telephone and telegraph lines and buildings convenient for operating the premises hereunder, and the right to use water and gas from said lands in operating same, and right of way over same for any purpose, and the right of ingress, egress and regress for such purposes, and of removing either during or at any time after the term hereof, any property or improvements placed or erected in or upon said land by said grantor. So far as possible said ingress and egress shall be over one route, and such use shall interfere with the cultivation of said land in the least possible degree, and hence all pipe lines shall be laid below plow depth.

To have and to hold the interest hereby conveyed unto said grantee, for the term of — years from the date hereof, and as much longer as oil or gas is produced in paying quantities. Yielding and granting to the grantor the — part of all the oil produced and saved from the premises, delivered free of expense into tank or pipe lines to grantor's credit. Grantee agrees to complete a well on said premises within — months from date hereof or pay to the grantor — dollars each three months thereafter in advance until said well is completed or this grant surrendered,

which grantor hereby agrees to accept. The drilling of such well, productive or otherwise, shall be full consideration to the grantor for grant hereby made to grantee with the exclusive right to drill one or more additional wells on the premises without payment of additional rental.

The above rental, if paid to grantor, in person or by check made payable to and deposited in postoffice directed to — at —, or deposited to the credit of grantor in the — bank of — on or before the expiration of any quarter, will extend the period for the completion of said well three months.

Should a well be found producing gas only, then the grantor shall be paid for each such gas well — dollars a quarter, — of each quarter in which the gas is sold therefrom.

Grantor may fully use and enjoy said premises for the purpose of tillage, except such parts as may be used by grantee for the purposes aforesaid. Grantee is not to put down any well on the lands granted within — of the buildings now on the said premises, without the grantor's written consent.

Grantee may save and use casing head gas from wells producing oil from the within premises in operating and developing wells on these premises and other premises owned by grantee, and if sold grantee agrees to pay to grantor — of the proceeds from the sale thereof.

Grantor is to have the right to use gas for domestic purposes for one dwelling-house, so long as the wells produce sufficient gas to operate the premises hereunder. The necessary connections to be made by and at the grantor's expense and at such place as he may designate.

The gas is to be used by grantor at — own risk and by and with such economical appliances as may be used in localities where gas is measured. This right in grantor is to be subject to the right of grantee to use all means and appliances on or off these premises to secure and facilitate the production of oil or gas.

Grantor hereby covenants and agrees that he is the lawful owner of the premises hereby conveyed and has the right to convey the same, and does hereby guarantee the title thereto unto grantee.

Grantor grants to grantee the exclusive right to surrender this grant at any time prior to the expiration of any rental paying period, in consideration of the money paid by grantee to the end of that period, by executing a release or deed of surrender, and recording same in the county wherein the land is situated, and shall thereafter be released and discharged from all obligations, covenants and conditions herein contained. Whereupon this grant shall be null and void. All conditions, terms and limitations between the parties hereto shall extend to their heirs, successors, legal representatives and assigns.

In witness, etc.

1. Lease by guardian, see ante, vol. 5, § 4543.
2. Lease of school house lot, see ante, vol. 1, § 610.
3. Modification of lease by parol, see ante, vol. 3, § 1862.

**5906. Agreement to mine oil or gas on payment without royalty.**

This agreement, made this — day of —, 19—, between — of —, first party, and — of —, second party, witnesseth, said first party, in consideration of the sum of — dollars, the receipt whereof is hereby acknowledged, hereby leases to the said second party the following described piece of land, situated in — county of — and state of —, bounded and described as follows (here insert description), containing — acres, more or less, for the purpose of boring, mining and operating for oil and gas on said land for a term of — years, and does hereby grant and convey unto said second party all the oil and gas which may be mined in and under said lands during said term.

Said second party shall have the exclusive right to mine for oil and gas on said land, during the continuance of said term; and shall have the privilege of taking coal and wood necessary for conducting said boring and mining operations thereon, timber for derricks, frames and refineries, and the right to erect all necessary buildings on said premises for carrying on the business of boring for oil, mining, refining and storing away the same; shall have the right, in case gas is found, to lay mains and pipes, on and over the same for the purpose of removal; shall have necessary road to and from any well or wells that may be bored; and shall

have possession whenever said second party shall be ready to commence operations.

In case said second party shall not be successful in obtaining oil or gas, he shall have the right to remove all engines, tools, machinery, buildings and such other things as may have been put thereon by said second party for the purpose of conducting said mining.

It is further agreed that the said second party shall have the right to sublease said land for the purpose of boring for oil or gas, and said sublessee or lessees shall have all rights and privileges accorded herein to said second party.

In witness, etc.

#### 5907. Mining lease.

This indenture, made this — day of —, 19—, between — of —, first party, and — of —, second party, witnesseth:

In consideration of rents, covenants and agreements hereinafter reserved and contained, said first party does grant and convey to said second party, his heirs, executors, administrators and assigns the right of entering in and upon the lands hereinafter described, for the purpose of searching for copper ore, and of conducting mining and quarrying operations, to such an extent as he may deem advisable for a period of — years from date, and does hereby grant and convey to said second party all the copper ore that may be mined in and under said lands hereinafter described during said term; but not to hold possession of any of said lands for any other purpose whatsoever, and to pay for the site of buildings, or other work necessary to said mining, a reasonable rent. Said lands are situated at — and described as follows (here insert description).

Said second party hereby agrees that he, his heirs, executors, administrators or assigns will pay or cause to be paid to said first party the following payments, to wit: (here insert payments), and also covenants that no damage shall be done to or upon said premises and lands other than may be necessary in the conduct and operation of said mine or mines, and that in the event of a mine being dug, he will so prop, support and bolster up the

roof of said mine as to insure safety and preserve intact the surface of the premises under which said mine is dug. And said second party further expressly agrees that if no copper ore be mined or quarried, as now contemplated by said parties, within the period of — years from the — day of —, 19—, then this lease shall determine and be wholly void, but that if said copper ore shall be found and mined by said second party, then at the end of the term for which this lease shall run said second party shall have the privilege of renewal for another term of a like number of years, for the consideration and upon the terms herein named.

In witness, etc.

#### 5908. Mining lease—Another form.

This agreement and indenture, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part,

Witnesseth: That the said party of the first part, for and in consideration of one dollar in hand paid, and the agreements, covenants, rents and royalties hereinafter made and provided for, do by these presents hereby demise, lease and let unto said party of the second part, for the sole purpose of mining and removing coal, stone, gas, water, oil, mineral and metals of every kind thereunder, the following tract of land situate in — county, in the state of —, to wit: (here describe land). The terms of this lease and the estate herein granted shall begin on the — day of —, 19—, and shall continue for — years, provided said enterprise shall be null and void in case said enterprise shall be abandoned for a period of twelve months; and said second party further covenants and agrees to pay first party — part of the net profits arising from such operations.

It is further agreed by the parties hereto that the second party shall have the right to enter upon said premises at any time for the purpose of prospecting and selecting a location for opening mines or wells, and for that purpose shall have the right to take therefrom coal, stone, minerals, gas, water, oils or metals for the purpose of testing the same.

It is further agreed that all the covenants, stipulations and



remedies contained and provided for in this instrument shall run with and follow this lease and the estate granted, and shall apply to, vest in and operate upon the heirs, representatives and assigns and grantees of the parties hereto.

It is further agreed that in case of the termination of this lease, either by expiration or forfeiture, said second party shall have the right to remove all buildings, machinery, tracks and fixtures which they have put or caused to be put upon said premises; provided, that they shall first pay to first party the money which they may owe to first party under this lease, and said second party shall not be held liable for any damages for opening stone quarries, sinking wells or other work done in pursuance of this lease, and the payment to the first party the said — part of the net profits arising from the operations of quarries and wells shall be in full payment of all demands under this lease.

In witness whereof, etc.

#### 5909. Mining lease—Another form.

—, of county of —, state of —, as lessor, in consideration of the royalties, rents and agreements herein contained, hereby grants, demises and leases unto — of —, state of —, as lessee, the following described mine and the appurtenances thereunto pertaining, situated in the — mining district, county of —, state of —, to wit: —, to have and to hold the same unto the said —, as lessee, for the term of — years from the date hereof, until — day of —, 19—, unless sooner terminated.

In consideration hereof the said lessee agrees as follows:

To hold and work said mine and premises according to law and the rules and customs of miners, and in a thorough and an economical manner, so as to take out the greatest possible amount of ore, with due regard to the safety, development and preservation of the property as a workable mine, from this day and during his possession under this lease.

To work said mine and premises as aforesaid, steadily and continually during all said term; to employ not less than — persons steadily in such work daily during said term.

To well and sufficiently timber said mine at all points properly, in accordance with good mining, and to repair all old timber whenever it is or may become necessary or requisite to keep the mine in a safe and reasonable condition.

To occupy, hold and work all cross-lobes, dips, spurs, feeders, angles, crevices or mineral deposits of any kind which are or may be discovered in working hereunder, or in any tunnel or crevice intersecting said lode or vein, by said lessee or his servants or grantees, in any manner at any point within — feet of the center line of said lode, as the property of said lessor, with privilege to the lessee to work the same as an appurtenance to the demised premises, under this lease during the term thereof, and not to locate or allow the same to be located save in the name of and for the use of the lessor. To duly and seasonably make and file for proper record, due proofs of annual work and labor as required by law for the benefit of the lessor and to protect his title to the premises.

To keep the drafts, shafts, tunnels and other passages and workings of said premises at all times thoroughly drained and clear of loose rock, soil and rubbish of all kinds.

Not to assign this lease or any interest therein, and not to sublet said premises in whole or in part, without the written consent of the lessor indorsed thereon, and not to allow any person, except said lessee and his workmen, to take and hold possession of said premises or any part thereof.

To pay and deliver to the lessor as royalty — per cent. of all ore mined, raised or taken from said premises during said term of this lease, of like assay to that retained by said lessee, without deduction, charge or off-set.

To deliver up to the lessor or his assigns the said premises, with all appurtenances and improvements, in good order and condition, with all shafts, tunnels and other passages thoroughly clear of rubbish, ready for immediate continued working (accidents not arising from negligence alone excepted), and without demand or notice, on the said date of the termination of this lease, or at any time prior thereto upon demand for forfeiture.

The lessor and his agents and servants may enter upon and into all parts of said mine and premises for the purpose of inspection, with use of all passages, ropes, windlasses, hoists, ladders and appliances for such purpose, at all reasonable times.

Upon the violation by the lessee of any of the agreements herein contained, the term of this lease shall at the option of the lessor or his assigns expire and terminate, and the same and the premises aforesaid, with all appurtenances, shall become forfeited to the said lessor, his heirs or assigns, and the lessor, his agents, heirs or assigns may thereupon, after demand of possession in writing, enter upon and take full possession of said premises and dispossess all persons occupying the same, with or without force, and with or without process of law, and all rights of the lessee in the premises shall cease and determine upon such demand.

Each and every clause and agreement herein contained shall extend and bind the heirs, executors, administrators and assigns of each and all parties hereto.

In witness whereof, etc.

#### 5910. Mining contract for development.

Article of agreement made this — day of —, 19—, between the — mining company of — by its general manager,

——, party of the first part, and the —— mining company of —— by its president, party of the second part.

That said party of the first part, having opened up its mine to within a few feet of the dividing line between the properties of the two companies, affording an opportunity to exploit and develop the —— mine, the property of the party of the second part, at a cost much less, and in a shorter space of time, than possible to be done through its own shaft, or by any other method now known to the party of the second part, and the party of the second part being desirous that the said exploiting and developing be done to the extent possible under an expenditure of ten thousand dollars (\$10,000), the said party of the first part hereby agrees to undertake the said work for and on behalf of the party of the second part, and binds itself to prospect and develop the said —— mine, using its best knowledge, skill and care, doing all the said work as thoroughly, perfectly and economically as if the said work were being done on its own property, to report the result of its work as progress is made, and to complete said work by or before the first day of ——, 19——; the said party of the second part to have all reasonable facilities afforded it for entering the property and inspecting the work, all for the consideration hereinafter named.

The party of the second part hereby agrees that the party of the first part shall have the right to repair and use the —— shaft at its discretion, and it hereby agrees and binds itself to pay to the party of the first part such sums of money as may be called for from time to time, the aggregate not to exceed the sum of ten thousand dollars (\$10,000).

Should any marketable ore be extracted in the course of the aforesaid developments, it is hereby agreed that the said party of the first part shall sell the same on the same basis as it sells its own ores, accounting to the party of the second part therefor; and, in consideration of the covenants and agreements hereof, it is mutually agreed that the party of the first part shall be allotted and paid such equitable portion of the proceeds of sale of said ores as may hereafter be agreed upon between the said parties.

In witness whereof, we have hereunto subscribed our names and affixed our seals the day and date before mentioned.

## 5911. Coal mining lease.

This instrument made and entered into this —— day of ——, 19——, by and between ——, party of the first part, and ——, party of the second part, witnesseth:

The said party of the first part, for the consideration of one dollar, to him in hand paid, the receipt of which is hereby acknowledged, as well as the agreements hereinafter mentioned, does hereby bargain, sell and convey unto the party of the second part, his heirs and assigns all the mineral, coal, iron ore, ore and potter's clay, and other minerals, and all rock or petroleum oil and salines, and all timber suitable for lumber, in, upon or under the farm or tract of land in the township of ——, in the county of ——, in the said state of ——, bounded and described as follows: (description).

Granting to the party of the second part, or his assigns, the exclusive right to enter upon said lands at any time hereafter, and search for coal, iron ore and all other minerals, oils and salines, and, when found, to remove the same from said lands together with all rights and privileges incident to the mining and securing said coal, iron ore, clay and other minerals, oils and salines, including the right of ingress and egress. And the party of the second part agrees to enter upon and make search for coal and other minerals in said lands above described; and should he find coal, iron ore or other minerals, or oils, or salines, in said lands and adjoining lands, of sufficient thickness, quantity and quality to justify him, the party of the second part, to open and work said mines, or oils, or salines, then he or his representatives or assigns shall pay to the party of the first part, his heirs or assigns, within five years after the completion of a railroad, built in connection with any leading railroad by which said minerals or oil can be taken to any large markets, the sum of —— dollars a year, until mining is commenced upon said premises, or during the continuance of this agreement; and the failure to make these advance payments yearly upon request shall be deemed an abandonment of this agreement, but not to the injury of the party of the second part, or his assigns. And the party of the second part shall have the right to abandon said lands and mining at any time

and remove all his buildings and fixtures from said lands. And the said party of the second part, by himself or assigns, agrees to pay to the party of the first part, his legal representatives or assigns, the sum of — cents for each ton (2,240 pounds) of screened coal, iron ore or other minerals mined and removed from said lands herein described; and the price shall be — cents per 1,000 feet of sawed lumber; and the price of rent for rock or petroleum oil and salines shall be — of the net proceeds. But it is understood and agreed that any advance payments of — dollars as before mentioned to be paid yearly, that shall be made to the party of the first part, are to apply on the payment of rent of coal, iron ore or other minerals or oil first mined thereafter. The payment of rent per ton on coal, iron ore, other minerals, clays, oils and salines, mined and removed, shall be made half-yearly, and all payments required by this agreement shall be made and accepted in bankable funds of the state of —. It is mutually understood by the parties that the coal, clay and ore under any dwelling-house or other permanent buildings upon the premises shall not be mined out, and as little injury to the surface of said land shall be done as possible, in the mining, removal and transportation of said coal, clay and ore, as herein contemplated. It is also mutually understood that the stipulations herein contained shall apply to and bind the heirs, executors and assigns of the parties, respectively.

In witness whereof, the parties hereunto set their hands and seals the day and year first above written.

#### 5912. Grub-stake contract.

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That whereas first party has this day furnished to second party the sum of — dollars (or provisions, tools, outfit and credit of the total value of — dollars) to be used and expended by said second party as and for a grub-stake, in prospecting and searching for mines, minerals, mineral lands and rights, including water rights, in — during the following — months:

Now, therefore, it is hereby mutually agreed that, in considera-

tion of the above-said, the second party will diligently and faithfully prospect, explore and search for mines, minerals and mineral lands, and water rights, within said territory during the term aforesaid, and properly acquire, locate and secure the same; that the said first party shall be the equal owner with second party of and in all such discoveries, prospects and rights; and that the said first party is not to be or become liable to any person or in any manner for any debt, contract or obligation which said prospector may incur or assume in the premises without the written consent of said first party.

Witness our hands this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

**5913. Escrow agreement as to mining deed.**

The enclosed deed to —— lode is hereby placed in the possession of —— of the city of ——, state of ——, as an escrow. If the grantee shall pay or cause to be paid to the holder of said escrow, on or before the —— day of ——, 19——, the sum of —— dollars for the use and benefit of the grantor, ——, the holder of said escrow, is hereby authorized to deliver the same to the grantee, his heirs or assigns; and in case the said grantee shall not pay or cause to be paid the aforesaid sum of money, then and in that event the holder of said escrow is hereby authorized and instructed to return the same to said grantor.

This the —— day of ——, 19——.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

## MORTGAGES.

### GENERAL CLAUSES OF REAL ESTATE MORTGAGES.

#### 5915. Proviso for payment of debts and interest.

Provided nevertheless, that if the said grantor, his heirs, executors, administrators or assigns shall pay unto the said grantee, his executors, administrators or assigns, the sum of — dollars in — years from this date, with interest semiannually at the rate of — per cent. per annum, then these presents (as also a promissory note of even date herewith, signed by the said —, whereby he promises to pay to the said grantee or order the said sum and interest at the times aforesaid) shall be void.

1. So far as the formal parts and covenants of a mortgage are the same as those of a deed, see subject DEEDS, ante, 5630 et seq. The clauses here given relate only to those parts of a mortgage which are superadded to the ordinary form of an absolute conveyance; that is, the condition, the provisions in regard to the payment of the debt secured, and the power of sale upon default. The forms of the powers of sale in use in the several states differ somewhat, and are in some states regulated more or less by statute; and therefore no attempt is made to give forms of powers of sale which shall be of general application.

In several states, power of sale mortgages are not in use, because it is provided by statute that mortgages shall be foreclosed only by suit in the nature of an equitable proceeding. Such is the case in Alaska Territory, Arizona Territory, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Nebraska and Nevada. But even in such states a power of sale does not invalidate the mortgage, but is of no practical advantage, because the foreclosure must be by action. In other states mortgages with powers of sale, though sometimes used, are not very common; as in Arkansas, California, Connecticut, Delaware, Florida, Georgia, Maryland, Maine, New Hampshire, New Jersey, Ohio, Oregon and Vermont.

2. See ante, vol. 5, §§ 4615, 4616, 4627, 4628.

#### 5916. Proviso for payment of present debt and future advances.

Provided, nevertheless, that if the said grantor, or his heirs, executors, administrators or assigns shall pay unto the said grantee or his executors, administrators or assigns the sum of — dollars loaned to him at the time of the execution hereof, and such further sums of money, not exceeding in all the sum of — dollars, as the said grantee may advance to the said grantor, on the security hereof, or which may become owing by the grantor to the grantee at any time hereafter during the con-

tinuance hereof, with interest thereon, and such further sums from the time the same shall be advanced or become owing as aforesaid, at the rate of — per cent. per annum, payable semi-annually, then these presents shall be void.

1. See ante, vol. 5, § 4641.

**5917. Proviso for payment of principal by instalments.**

Provided nevertheless, that if the said grantor, his heirs, executors, administrators or assigns shall pay unto the said grantee, his executors, administrators or assigns, the sum of — dollars, with interest at the rate of — per cent. per annum, by instalments as follows: the said principal sum of — dollars by equal yearly instalments of — dollars each, whereof the first is to be paid on the — day of — next, and a like instalment on every subsequent — day of —, until the said principal sum shall be fully paid, and interest on the said sum of — dollars, or on so much thereof as shall from time to time remain unpaid, by half-yearly payments on the — day of — and the — day of — in each year, then these presents shall be void.

**5918. Proviso for payment of balance owing by firm to bankers on account.**

Provided nevertheless, that if the said mortgagors, their heirs, executors, administrators or assigns shall pay unto the mortgagees, their executors, administrators or assigns, on demand, the balance on account current which shall be for the time being owing to said mortgagees, in respect of any bills, notes or drafts accepted, paid or discounted, or advances made to or for the use or accommodation of said mortgagors or their said firm, with interest, commissions and other charges, together with interest on the said balance from the time of such demand being made, at the rate of — per cent. per annum, then these presents shall be void.

**5919. Provision for partial or complete payment before maturity of mortgage.**

The grantor is hereby authorized and permitted to pay the debt hereby secured, or any part of it, not less than — dollars at



any one time, whenever and at such time and times as he may choose; and the mortgagee hereby agrees to accept such payment or payments, and thereupon the interest shall cease upon such part of the debt so paid; and upon the full payment of the said debt, with all interest up to the date of actual payment, he will discharge this mortgage.

**5920. Provision for reduction of interest on punctual payment.**

Provided always, and it is hereby agreed, that if the said mortgagor, his heirs, executors, administrators or assigns shall on every half-yearly day on which the interest is hereinbefore made payable, or within — days after each of such days respectively, pay to the said mortgagee, his executors, administrators or assigns interest for the principal sum for the time being owing to him or them on this mortgage, at the rate of — (a reduced rate) per cent. per annum, and if the said mortgagor, his heirs, executors, administrators and assigns, shall at all times perform and observe all the covenants and agreements herein contained, and on his or their parts to be performed or observed, then and in such case the said mortgagee, his executors, administrators or assigns, shall accept interest for the principal sum for the time being owing as aforesaid at the rate of — (the reduced rate) per cent. per annum, for every half year for which such interest shall be punctually paid within the time limited as aforesaid.

1. An agreement for a reduced rate of interest on the punctual payment of it is legal, though an agreement for increasing the rate in case of delay in paying it might be objectionable on the ground that such a provision would be in the nature of a penalty, against which relief might be had in equity.

**5921. Agreement increasing the rate of interest in mortgage.**

Whereas the mortgagor has requested the mortgagee to extend the time of payment of the mortgage debt, and the mortgagee has consented to do so upon having the rate of interest upon the mortgage debt increased: Now in pursuance of said agreement the mortgagor hereby covenants with the mortgagee that as from this — day of —, lasting so long as this principal sum secured by said mortgage or any part thereof shall remain owing, he will pay to the mortgagee interest at the rate of — per

cent. per annum, instead of at the rate of — per cent. per annum, on the money for the time being remaining owing, upon the days appointed in the mortgage for payment of interest; and it is hereby agreed that the mortgage shall henceforth have effect as if the rate of interest therein had been — per cent. per annum instead of — per cent. per annum; but in all other respects the mortgage shall not be affected by these presents.

In witness, etc.

(Signatures and seals of both parties.)

**5922. Proviso that whole debt shall become due upon default in payment of any instalment of principal or interest.**

And provided also, that if the said grantor, his heirs, executors or administrators shall at any time make default in the payment of any of the said instalments or interest, or any part thereof respectively, for the period of — days after the time hereinbefore appointed for the payment thereof, or in the performance of any of the covenants on the part of said grantor herein contained, then and in any such case the whole of said principal money which shall for the time being remain unpaid shall forthwith become payable, and shall be paid, with interest at the rate aforesaid, by the said grantor, his heirs, executors or administrators, to the said grantee, his executors, administrators or assigns, on demand.

1. See ante, vol. 5, § 4631.

**5923. Who may exercise power of sale.**

It is hereby agreed and declared, that the power of sale and all the powers and rights hereinbefore given to the said mortgagee, his executors, administrators and assigns, may be exercised by him or them, or the person or persons for the time being entitled to receive the moneys hereby secured, and to give a discharge for the same.

1. See ante, vol. 5, § 4837.

**5924. Purchaser under mortgage sale shall not be bound to see that notice has been given.**

Provided always, that on any sale made or purporting to be made in pursuance hereof, no person shall be obliged to inquire

whether such default has been made, or whether such notice has been given as is hereby required, or whether any money is owing on this security, or in any wise to ascertain the propriety or regularity of any such sale, or be affected by express notice that any such sale is improper.

**5925. That mortgagee's receipts shall discharge purchaser.**

And it is hereby declared, that the receipts of the mortgagee, his executors, administrators and assigns for the purchase-money of the premises sold, shall discharge the person or persons paying the same therefrom, and from all responsibility of seeing to the application thereof.

**5926. Covenant by mortgagor to insure.**

That during the continuance hereof, the mortgagor or his assigns will keep the buildings on the premises insured against loss by fire in the name of the mortgagee, in the sum of — dollars, and will on demand produce to the mortgagee the policy or policies of insurance (or will immediately deliver to the mortgagee the policy or policies). If the mortgagor shall make default in procuring such insurance the mortgagee may at his discretion insure and keep insured all or any of the said buildings to the amount aforesaid, and that the expense of such insurance shall be repaid to him by the mortgagor on demand, and until so repaid shall be added to the principal sum secured, and bear interest accordingly.

1. See ante, vol. 5, § 4630.

**5927. Covenant by mortgagor to keep in repair.**

That during the continuance hereof the mortgagor will keep all buildings subject thereto in good and substantial repair; and that if he shall neglect to do so the mortgagee may at his discretion enter upon the said premises from time to time in order to repair and keep in repair the said buildings without thereby becoming liable as a mortgagee in possession, and that his expenses of so doing shall be repaid to him by the mortgagor on demand, and until so repaid shall be added to the principal sum secured and bear interest accordingly.

**5928. Covenant by purchaser to pay mortgage and covenant by mortgagee to extend mortgage.**

In consideration of the mortgagee's covenant hereinafter contained, the purchaser hereby covenants with the mortgagee that he will pay to the mortgagor on the — day of — next, the sum of — dollars, part of the principal sum secured hereby; and also so long as any part of the principal sum of said mortgage shall remain unpaid will pay to the mortgagee interest on the sum remaining unpaid at the rate therein mentioned, by equal half-yearly payments, on the — day of — and the — day of — in every year.

In consideration of the owner's covenant hereinbefore contained the mortgagee hereby covenants with the owner that if the owner shall pay each instalment of interest on the day on which the same becomes due, or within — days thereafter, and shall observe and perform the covenants on the part of the mortgagor implied or contained herein, other than the covenants for the payment of the principal sum and interest therein contained, the mortgagee will not, before the — day of —, call in the moneys secured by said mortgage or any part thereof.

1. See ante, vol. 5, §§ 4717, 4718.

**5929. Covenant by mortgagor to keep down interest on prior mortgage.**

The said —, mortgagor, hereby covenants that he, his heirs, executors and administrators will at all times during the continuance hereof keep down the interest on a prior mortgage, to which the said premises are subject, and will at all times at the request of said mortgagee, his agent or assigns produce the receipt for the last payment of interest due on the prior mortgage.

**5930. Covenant not to remove buildings or machinery.**

And the said — and — do, for themselves, their heirs, executors and administrators, and as separate covenants, each of them doth, for himself, his heirs, executors and administrators, hereby covenant with the said —, his executors, administrators and assigns, that said grantors, or the person or persons for the time being carrying on the business in their names or the

name of their said firm, or any of them, their or any of their executors, administrators or assigns, will not pull down or remove the said mill, buildings, engine house, steam engine, boilers, mill gear, fixed or movable machinery, implements, utensils, premises or any of them, or any part thereof, without the written permission of the said mortgagee, his heirs or assigns, unless in case such pulling down or removal shall be rendered necessary by any of the said premises being worn out or injured, and in such case shall replace the premises or articles worn out or injured by others of at least equal value.

1. See ante, vol. 5, § 4626.

## COMMON FORMS OF MORTGAGES USED IN SEVERAL STATES.

### 5931. Mortgage of real estate.

This indenture witnesseth that — of — county, in the state of —, mortgage— and warrant— to — of — county, in the state of —, the following real estate in — county in the state of —, to wit: —, and the rights, privileges and appurtenances thereunto appertaining, and the rents, issues and profits of said mortgaged premises, to secure the payment, when the same shall respectively become due, of —, all of said notes bearing interest at the rate of — per cent. per annum, payable semiannually, until maturity, and all of said notes being dated — and all bearing interest at eight per cent. per annum after maturity with attorney's fees, and all negotiable and payable at — in the city of —, —; all of said notes being executed by — and payable to the order of —.

The said mortgagor— agree— that upon — failure to pay any or either of said principal notes, or interest thereon, when the same shall become due, or insurance, taxes or assessments, as hereinafter provided, or on — failure to comply with each or any of the terms and conditions of this instrument, then all of the debt, secured hereby, shall become due and collectible at the option of said mortgagee, and it is agreed that —he— shall thereupon be entitled to have a receiver appointed to collect the rents, issues and profits arising from said mortgaged premises. The omission

of said mortgagee to exercise said option upon any default, as aforesaid, shall not preclude — from the exercise thereof upon any subsequent default. Notice of the exercise of such option as to any of the conditions herein provided for is not required to be given by said mortgagee, said mortgagor— hereby waiving any such notice.

The said mortgagor— hereby agree— to keep all legal taxes and assessments on said premises paid, as and when the same shall become due, and to keep the buildings on said premises insured to the amount of — dollars, in reliable insurance companies, to the approval of said mortgagee, and for — benefit (as — interest may appear), and to deliver all policies of insurance on such buildings to said mortgagee, to be held until said mortgage debt is fully paid; and in case of a failure by said mortgagor— to pay such taxes or assessments, or to procure and deliver such insurance, the said mortgagee may at — election, pay such taxes and assessments, and effect such insurance, and any and all sums of money so paid, with interest at the rate of eight per cent. per annum, from date of payment, shall be and they are hereby made a part of the mortgage debt hereby secured. The mortgagee shall, at — option, be entitled to be subrogated to any lien, claim or demand paid by — or discharged with the moneys advanced by said mortgagee and secured by this mortgage; and

It is further agreed, generally, that said mortgagee may, at — election, advance and pay any sums of money that in — judgment may be necessary to perfect the title of said mortgaged premises in said mortgagor—, or to preserve the security intended to be given by this mortgage, and any and all sums of money so advanced, and paid, with interest at the rate of eight per cent. per annum, shall be, and they are hereby, made part of the mortgage debt hereby secured. The mortgagor— hereby expressly agree— to pay all and singular the sums of money above secured, without relief from valuation or appraisal laws.

In witness whereof, the mortgagor— ha— hereunto set ——— hand— and seal—, this ——— day of ———, 19—.

————— (Seal.)

————— (Seal.)

————— (Seal.)

(Acknowledgment.)

————— (Seal.)

### 5932. California, Idaho, Nevada—Short form.

This indenture, made the ——— day of ———, 19—, between ———, first party, and ———, second party, witnesseth, that the said first party, for and in consideration of the sum of ——— dollars lawful money of the United States of America, to him in hand paid, does hereby grant, bargain, sell, convey and confirm unto the said second party, and to his heirs and assigns, forever, all that certain piece or parcel of land situate in ———, county of ———, state of ———, bounded and described as follows, etc., together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in any wise appertaining. This conveyance is intended as a mortgage to secure the payment of ——— dollars (set out time of payment, interest, etc., and whether evidenced by a note or bond), and these presents shall be void if such payment be made (according to the tenor and effect thereof). But in case default be made in the payment of the principal or interest as herein provided, then the said second party, his executors, administrators and assigns, are hereby empowered to sell the said premises with all and every of the appurtenances, or any part thereof, in the manner prescribed by law; and out of the money arising from such sale to retain the said principal and interest, together with the costs and charges of such sale, and ——— per cent. for attorney's fees, and the overplus, if any there be, shall be paid by the party making such sale, on demand, to the said first party, his heirs or assigns.

In witness, etc.

### 5933. Mortgage securing promissory note and counsel fees.

This indenture, made the ——— day of ———, 19—, between ———, first party, and ———, second party, witnesseth, that the

said first party is justly indebted to the said second party in the sum of — dollars lawful money of the United States, upon a promissory note made at the date hereof by —, in the words and figures following, to wit:

\$ —. San Francisco, November —, 19—. — years after date, without grace, I promise to pay to —, or order, the sum of — dollars, for value received, with interest thereon, at the rate of — per cent. per annum, payable semiannually from this date until paid. (Signed) —.

Now this indenture witnesseth, that for the purpose of securing the payment thereof and the interest thereon as it shall become due and payable, the said first party, for and in consideration of the premises, as also in consideration of the sum of one dollar lawful money to him in hand paid by the said second party, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, conveyed and confirmed, and doth hereby grant, bargain, sell, convey and confirm, unto the said second party, his heirs and assigns, all that, etc. To have and to hold the said premises, with all the tenements, hereditaments and appurtenances thereunto belonging, unto the said second party, his heirs and assigns, forever. Provided, nevertheless, that if the said first party shall well and truly pay or cause to be paid the said promissory note, with interest thereon, according to the tenor and effect thereof, then this indenture and the estate hereby granted shall be null and void, else to remain in full force and virtue. But it is distinctly understood and agreed that if the interest thereon, or the principal thereof, shall not be punctually paid when due and payable, as therein mentioned, then and in such case the principal and interest shall be deemed and taken to be wholly due and payable, and proceedings may forthwith be had by the said second party, his heirs, executors, administrators or assigns, for the recovery thereof, either by suit on said note or on this mortgage; anything therein or herein contained to the contrary thereof notwithstanding. And if any suit or other proceedings be had for the recovery of the said principal sum and interest on either said note or this mortgage, it shall and may be lawful for the said second party, his heirs, executors, admin-



istrators or assigns, to include in the judgment that may be recovered counsel fees and charges of attorneys and counsel employed therein, not exceeding — dollars, and — per cent. thereon, upon the amount due the plaintiff on said note and this mortgage; and if said suit is settled before judgment, the same fee and percentage shall be allowed, as well as all payments that the said second party, his heirs, executors, administrators or assigns may make for his or their security, or on account of any taxes, charges, encumbrances or assessments whatsoever on the said premises.

In witness, etc.

**5934. California—Statutory form of mortgage of realty.**

This mortgage, made the — day of —, 19—, by — of —, mortgagor, to — of —, mortgagee, witnesseth, that the mortgagor mortgages to the mortgagee (here describe property), as security for the payment to him of — dollars, on (or before) the — day of —, in the year —, with interest thereon (or as security for the payment of an obligation, describing it, etc.).

1. Cal. Civ. Code 1906, § 2948.

**5935. Mortgage securing bond.**

Indenture made the — day of —, 19—, between — of —, first party, and — of —, second party. Whereas the said first party in and by a certain obligation or writing obligatory under his hand and seal, bearing even date herewith, stands bound unto the said second party in the sum of — dollars lawful money of the United States, conditioned for the payment of the sum of — dollars, as by reference to the said obligation and condition thereof will appear:

Now this indenture witnesseth, that the said first party, for and in consideration of the aforesaid debt or sum of — dollars, and for the better securing the payment thereof, with interest as aforesaid, unto the said second party, his executors, administrators and assigns, in discharge of the said recited obligation, as also of the further sum of one dollar to the said

first party now paid by the said second party, the receipt whereof is hereby acknowledged, has granted, bargained, sold, released, and confirmed and hereby doth grant, bargain, sell, release and confirm, unto the said second party, his heirs and assigns, all that, etc.; together with all and singular the improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances whatsoever thereunto belonging or in any wise appertaining, and the reversions and remainders, rents, issues and profits thereof.

To have and to hold the said improvements, hereditaments and premises hereby granted, or mentioned, or intended so to be, with the appurtenances, unto the said second party, his heirs and assigns, to the only proper use and behoof of the said second party, his heirs and assigns, forever.

Provided always, nevertheless, that if the said first party, his heirs, executors, administrators or assigns, shall and do well and truly pay or cause to be paid, unto the said second party, his executors, administrators or assigns, the aforesaid debt or sum of — dollars as hereinbefore mentioned and appointed for the payment thereof, with interest, according to the condition of the said recited obligation, without fraud or delay, and without any deduction, defalcation, or abatement to be made of anything, for or in respect of any taxes, charges, or assessments whatsoever, that then and from thenceforth as well this present indenture and the estate hereby granted as the said recited obligation shall cease, determine, and become absolutely void and of no effect, anything hereinbefore contained to the contrary in any wise notwithstanding. In witness, etc.

**5936. District of Columbia—Mortgage—Statutory form—With or without power of sale.**

This mortgage, made this — day of —, in the year —, witnesseth that whereas I, — of —, am indebted unto — of —, in the sum of —, payable —, for which I have given to said — my promissory notes or bonds, or other instruments (here describe). Now, in consideration thereof, I hereby grant unto the said — all that (describe property) provided that if I shall punctually pay said (notes or other instruments)

according to the tenor thereof, then this mortgage shall be void. And if I shall make default in such payment the said — is hereby authorized and empowered to sell said property at public auction on the following terms (here insert them), and out of the proceeds of sale to retain whatever shall remain unpaid on my said indebtedness and the costs of such sale, and the surplus, if any, to pay to me.

Given under my hand and seal.

————— (Seal.)

1. Garges Code 1901, § 556.

### 5937. Georgia—Mortgage of real property.

This indenture, made this — day of —, 19—, between —, of the county of — and state of Georgia, of the one part, and —, of the county of — and state of —, of the other part, witnesseth, that the said — has made and delivered to the said — a certain promissory note, subscribed with his hand and bearing date this — day of —, 19—, whereby the said — hath promised to pay the said —, or to his order, — dollars, in — years from this date, for value received: Now, for and in consideration of the sum of — dollars, by the said second party to the said first party in hand paid, the receipt whereof is hereby acknowledged, as well as for the better securing the payment of the aforesaid promissory note, the said — has granted, bargained and sold, and doth by these presents grant, bargain, sell and convey unto the said —, his heirs and assigns, all that parcel of land, etc., with all the rights, privileges and appurtenances to the same belonging or in any wise appertaining: To have and to hold said bargained property to the said —, his heirs and assigns, to his and their own proper use, benefit and behoof, forever. And the said —, for himself, his heirs, executors and administrators, the said bargained property unto the said — will warrant and forever defend against the claim of himself and his heirs, and against the claim of all other persons whomsoever.

Provided, nevertheless, that if the said —, his heirs, executors or administrators shall and do well and truly pay, or cause to be paid, unto the said —, his heirs and assigns, the sum of

money in said note specified, and interest that may accrue thereon, on the day and at the time mentioned and appointed for the payment thereof in the said promissory note mentioned, with lawful interest for the same, according to the tenor and effect of said note, then and thenceforth, as well this present indenture, and the right to the property thereby conveyed, as the said promissory note, shall cease, determine and be void to all intents and purposes.

In testimony, etc.

**5938. Illinois—Mortgage in general use in Illinois.**

This indenture witnesseth, that the mortgagor, of the —, of the county of — and state of Illinois, mortgages and warrants to — of the county of —, in the state of Illinois, to secure the payment of — dollars, payable as follows, to wit: — with interest at the rate of — per cent. per annum, payable — annually, according to the tenor and effect of a certain promissory note of even date herewith, payable to the order of said mortgagee and signed by said mortgagor, all the following described real estate, to wit: — situated in the county of — and state of Illinois, hereby releasing and waiving all rights under and by virtue of the homestead exemption laws of the state of Illinois, and all right to retain possession of said premises after any default in or breach of any of the covenants, agreements or provisions herein contained.

If default be made in the payment of the said promissory note (or any of them) or any part thereof, or the interest thereon, on any part thereof, when due, or in case of waste or nonpayment of taxes or assessments, or neglect to procure or renew insurance, as hereinafter provided, then and in such case the whole of said principal and interest secured by the said note in this mortgage mentioned shall thereupon, at the option of the holder of said note, become immediately due and payable; anything herein or in said promissory note contained to the contrary notwithstanding; and this mortgage may, without notice to the said mortgagor of said option or election, be immediately foreclosed; and it shall be lawful for said mortgagee, his agents or attor-

neys, to enter into and upon said premises, and to receive all rents, issues and profits thereof, the same when collected, after the deduction of reasonable expenses, to be applied upon the indebtedness secured hereby.

And the said mortgagor further covenants and agrees, to and with the said mortgagee, that he will in the meantime pay all taxes and assessments on the said premises, and will, as a further security for the payment of said indebtedness, keep all buildings that may at any time be upon said premises insured in some reliable company up to the insurable value thereof, or up to the amount remaining unpaid of the said indebtedness, by suitable policies, payable, in case of loss, to the said mortgagee, and deliver to him all policies of insurance thereon as soon as effected, and all renewal certificates therefor; and said mortgagee shall have the right to collect, receive and receipt, in the name of said mortgagor or otherwise, for any and all moneys that may become payable and collectible upon any of such policies of insurance by reason of damage to or destruction of said buildings, or any of them, and apply the same, less his reasonable expenses in obtaining such money, in satisfaction of the money secured hereby; or, in case said mortgagee shall so elect, may use the same in repairing or rebuilding such buildings; and in case of refusal or neglect of said mortgagor thus to insure, or deliver such policies, or to pay taxes, said mortgagee may procure such insurance, or pay such taxes, and all moneys thus paid shall be secured hereby, and shall bear interest at seven per cent., and be paid out of the proceeds of the sale of said premises or out of such insurance money, if not otherwise paid by said mortgagor.

And said mortgagor further agrees that in case of default in the payment of the interest on said note when it becomes due and payable, it shall bear like interest with the principal of said note.

If default be made in the payment of any part of said promissory notes or of the interest thereon, when due; or in case of a breach in any of the covenants or agreements herein contained; or in case said mortgagee is made a party to any suit by reason of the existence of this mortgage, then or in any of such cases

said mortgagor shall at once owe said mortgagee his reasonable attorney's or solicitor's fees for protecting his interest in such suit and for the collection of the amount due and secured by this mortgage, whether by foreclosure proceeding or otherwise, and a lien is hereby given upon said premises for such fees; and in case of foreclosure hereof, a decree shall be entered for such reasonable fees, together with whatever other indebtedness may be due and secured hereby.

The covenants, agreements and provisions herein contained shall apply to, and, as far as the law allows, be binding upon and be for the benefit of the heirs, executors, administrators and assigns of the said parties respectively.

In witness whereof, the said mortgagor has hereunto set his hand and seal this —— day of ——, 19—.

#### **5939. Illinois—Statutory form of mortgage.**

The mortgagor (here insert name or names) mortgages and warrants to (here insert name or names of mortgagee or mortgagees), to secure the payment of (here recite the nature and amount of indebtedness, showing when due and the rate of interest, and whether secured by note or otherwise), the following described real estate (here insert description thereof), situate in the county of ——, in the state of Illinois. Dated this —— day of ——, 19—. A. B. [L. S.]

1. Rev. Stat. 1912, ch. 30, § 11.

#### **5940. Indiana—Statutory form.**

A. B. mortgages and warrants to C. D. (here describe the premises), to secure the repayment of (here recite the sum for which the mortgage is granted, or the notes or other evidences of debt, or a description thereof, sought to be secured, also the date of the repayment).

1. Burns' Rev. Stat. 1908, § 3961.

#### **5941. Iowa—Statutory form.**

For the consideration of —— dollars I hereby convey to —— the following tract of real estate (describing it), and I warrant

the title against all persons whomsoever. To be void upon condition that I pay, etc.

1. Code 1897, § 2958.

**5942. Kansas—Statutory form of mortgage of land.**

— mortgages and warrants to — (here describe the premises), to secure the payment of (here insert the sum for which the mortgage is granted, or the notes or other evidences of debt, or description thereof, sought to be secured, also the date of payment).

1. Gen. Stats. 1909, § 5196.

**5943. Maryland—Statutory form of mortgage of real estate.**

This mortgage, made this — day of —, by me, —, witnesseth, that in consideration of the sum of — dollars now due from me the said — to —, I, the said —, do grant unto the said — (here describe property); provided that if I, the said —, shall pay on or before the — day of — to the said — the sum of — dollars, with interest thereon from —, then this mortgage shall be void.

Witness my hand and seal.

1. Pub. Gen. Laws 1904, art. 21, § 60.

**5944. Maryland—Statutory form of deed of trust.**

This deed, made this — day of —, in the year —, by me, —, witnesseth, that whereas (here insert the consideration for making the deed) I, the said —, do grant unto —, as trustee, the following property (here describe the property), in trust for the following purposes (here insert the purposes of the trust, and any covenant that may be agreed upon).

Witness my hand and seal.

Test:

A. B.

1. Pub. Gen. Laws 1904, art. 21, § 55.

**5945. Michigan—Statutory form of mortgage.**

A. B. mortgages and warrants to C. D. (describe premises) to secure the repayment of (recite sum for which mortgage is

granted, or notes or other evidences of debt, or a description thereof, sought to be secured, also the date of repayment).

1. 3 Comp. Laws 1897, § 9017.

**5946. Mississippi—Statutory form of deed of trust or mortgage.**

In consideration of (here state it), I convey and warrant to — the land described as (describe it). In trust, to secure (here state what is secured, and all the necessary provisions).

Witness my signature the — day of —, 19—.

1. Code 1906, § 2820.

**5947. Missouri—Deed of trust to secure debt.**

This deed of trust made and entered into this — day of —, one thousand nine hundred and —, by and between — and —, his wife, of the county of —, and state of Missouri, parties of the first part; and —, of the county of —, state of Missouri, party of the second part; and —, of the county of —, state of Missouri, party of the third part, witnesseth, that the said parties of the first part, in consideration of the debt and trust hereinafter mentioned and created, and of the sum of one dollar to them paid by the said party of the second part, the receipt of which is hereby acknowledged, do by these presents grant, bargain, sell and convey unto the said party of the second part and to his heirs and assigns, forever, the following described tract of land, situate in the county of — and state of —, to wit: (here describe it), with all rights, privileges, and appurtenances thereto belonging. In trust, however, for the following purpose: whereas the said — did, on the — day of —, 19—, make and deliver to one — his promissory note in words and figures following (copy note): Now, if the said —, his executors or administrators, shall pay the sum of money specified in said note, with all the interest that may be due thereon when said note shall become due and payable, according to the tenor and effect thereof (or within — days from the date of this deed), then this deed shall be void, and the property hereinbefore conveyed shall be released at the expense of the said —, otherwise the same shall remain in full force; and the said —, or in case of his death, removal



from the state, refusal, or other disqualification to act, the sheriff of the county, may proceed to sell the property hereinbefore described, or so much thereof as may be necessary to pay the amount specified in said note, with interest, and the costs of this trust, at public vendue, for cash, at —, in the county of —, first giving — days' (not less than twenty) notice of the time, terms and place of sale, and of the property to be sold, by advertisement in some newspaper published in the county of —, in the state of Missouri (or in such other manner as the parties may agree to), and upon the sale, and the payment of the purchase-money shall execute and deliver a deed of the property sold to the purchaser; and any statement of facts or recital by the said trustee, in relation to the nonpayment of the money secured to be paid, the advertisement, sale, receipt of the money, and the execution of the deed to the purchaser, shall be received as prima facie evidence of such facts; and the said trustee shall, out of the proceeds of such sale, pay, first, the cost and expenses of this trust, and next, whatever may be in arrear and unpaid on the note aforesaid, and the balance (if any) shall be paid to the said —, or his legal representatives. And the said —, trustee as aforesaid, covenants to and with the said — and the said —, severally, faithfully to perform and fulfil the trust herein created.

In witness whereof we, the said parties, have hereunto subscribed our names this — day of —, 19—.

1, "Form adapted to the laws of Missouri." 3 Rev. Stat. 1909, p. 3770.

#### 5948. Missouri—Mortgage with power of sale.

Know all men by these presents, that (if a married man, say we, — and —, the said —, or if single, say I, —) of the county of —, in the state of Missouri, have this day, for and in consideration of the sum of — dollars, to the said — in hand paid by —, of the county of —, in the state of —, have granted, bargained, and sold, and by these presents do grant, bargain and sell, unto the said —, the following described tracts or parcels of land, situate in the county of —, in the state of

Missouri; that is to say (here describe the land sold). To have and to hold the premises hereby conveyed, with all the rights, privileges, and appurtenances thereto belonging or in any wise appertaining, unto the said —, his heirs and assigns, forever, upon this express condition: whereas the said —, on the — day of —, 19— (or, has this day), made, executed, and delivered to the said — his certain promissory note, in words and figures following, to wit (here copy note). Now, if the said —, his executor or administrator, shall pay the sum of money specified in said note, and all the interest that may be due thereon, according to the tenor and effect of said note, then this conveyance shall be void; otherwise it shall remain in full force and effect. And the said —, or his executor or administrator, may proceed to sell the property hereinbefore described, or any part thereof, at public vendue, to the highest bidder, at —, in the county of —, for cash in hand, first giving — days' (not less than twenty) public notice of the time, terms, and place of sale, and of the property to be sold, by advertisement (in some newspaper printed or circulated in the county where the premises are situate, or any mode of advertisement agreed upon by the parties), and upon such sale, and the payment of the purchase-money, shall execute and deliver a conveyance of the property so sold to the purchaser thereof; and any statement of fact or recital by the said — in such conveyance in relation to the advertisement, sale, receipt of the purchase-money, or execution of such conveyance, shall be received as prima facie evidence of the truth thereof. And the said — shall, with the proceeds of the sale aforesaid, pay, first, the expenses of this trust, and next, whatever may be in arrear and unpaid on said note, whether of principal or interest; and the balance (if any) shall be paid over to the said —, or his legal representatives.

In witness whereof, etc.

1. "Forms adapted to the laws of Missouri." 3 Rev. Stats. 1909, p. 3772.

#### 5949. Missouri—Deed by trustee.

Whereas —, and —, the wife of the said —, on the — day of —, 19—, executed and delivered to — his deed to certain lands in the said deed specified, that is to say (here

describe land as described in deed of trust), and in trust for the purposes therein mentioned; and whereas the sum of money mentioned in said deed, and the interest thereon, remained unpaid at and after the time specified in said deed for its payment; and whereas, also, the said —, in pursuance of the power and authority vested in him by the deed aforesaid, did advertise the property in said deed mentioned for sale, by publication in a newspaper called —, published in the county of —, in the state of Missouri (or in the manner provided in the deed of trust, as the facts may be), at least — days before the day of sale, notifying all whom it might concern that the said property would be sold on the — day of —, 19—, at —, in the county of —, for cash in hand; and whereas the said —, on the day and year, at the place and on the terms last aforesaid, did offer the property aforesaid for sale at public vendue, and —, being the highest and best bidder therefor, became the purchaser of the following described tract of land (describing same) at and for the sum of — dollars, the receipt whereof is hereby acknowledged: Now, therefore, in consideration of the premises, I, the said —, by these presents do grant, alien, and convey unto the said —, his heirs and assigns, all the right, title and interest which I acquired in and to the above-described lands, and the rights, privileges, and appurtenances thereto belonging, by virtue of the above-recited deed: To have and to hold the premises thereby conveyed, together with all the rights, privileges, and appurtenances aforesaid, unto him, the said —, his heirs and assigns forever. In witness whereof, I have hereunto subscribed my name this — day of —, 19—.

—————, Trustee.

1. "Forms adapted to the laws of Missouri." 3 Rev. Stat. 1909, p. 3771.

#### 5950. Montana—Statutory form of mortgage.

This mortgage, made the — day of —, in the year —, by — of —, mortgagor, to — of —, mortgagee, witnesseth, that the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or before) the — day of —, in the year

—, with interest thereon (or as security for the payment of an obligation, describing it, etc.).

1. Rev. Civ. Code 1907, § 5748.

### 5951. New York—Statutory form of mortgage.

This indenture, made the — day of —, in the year nineteen hundred and —, between — of —, party of the first part, and — of —, party of the second part: Whereas the said — is justly indebted to the said party of the second part in the sum of — dollars, lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of — dollars, on the — day of —, nineteen hundred and —, and the interest thereon, to be computed from — at the rate of — per centum per annum, and to be paid at —, it being thereby expressly agreed that the whole of the said principal sum shall become due after default in the payment of any instalment of principal, interest, taxes or assessments, as hereinafter provided:

Now, this indenture witnesseth, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, and also for and in consideration of one dollar, paid by the said party of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said party of the second part, and to his heirs (or successors) and assigns forever (description), together with the appurtenances, and all the estate and rights of the party of the first part in and to said premises.

To have and to hold the above-granted premises unto the said party of the second part, his heirs and assigns, forever.

Provided always that if the said party of the first part, his heirs, executors, or administrators, shall pay unto the said party of the second part, his executors, administrators, or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents, and

the estate hereby granted, shall cease, determine, and be void.

And the said party of the first part covenants with the party of the second part as follows:

First. That the party of the first part will pay the indebtedness as hereinbefore provided; and if default be made in the payment of any part thereof, the party of the second part shall have power to sell the premises therein described, according to law.

Second. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Third. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said party of the second part after default in the payment of any instalment of principal or interest for — days, or after default in the payment of any tax or assessment for — days after notice and demand.

In witness whereof, the said party of the first part hath hereunto set his hand and seal, the day and year first above written.

In the presence of —.

1. 4 Birdseye's C. & G. Consol. Laws 1909, p. 5070.

#### 5952. North Carolina—Form for small mortgages.

—, — County:

I, —, am indebted to — in the sum of —, as evidenced by my note dated —, due —, with interest from — at the rate of — per cent. and to secure its payment do mortgage to him (or convey in trust to —) the following tract of land (here describe land).

[Seal]

1. Pub. Laws 1907, p. 504, ch. 337.

#### 5953. North Dakota—Statutory form of mortgage of real property.

This mortgage, made the — day of —, in the year —, by A B, of —, mortgagor, to C D, of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars on or before the — day of —, in the year —,

with interest thereon (or as security for the payment of an obligation, describing it, etc.).

1. Rev. Codes 1905, § 6174.

**5954. Oklahoma—Statutory form of mortgage of real property.**

This mortgage made — day of — in the year — by A B, of — mortgagor to C D, of —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of — dollars, on or before the — day of — in the year —, with interest thereon (or as security for the payment of an obligation, describing it).  
A. B.

1. Comp. Laws 1909, § 4409.

**5955. South Dakota—Statutory form of mortgage of real property.**

This mortgage, made the — day of —, in the year —, by A B, of —, mortgagor, to C D, of —, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on (or before) the — day of —, in the year —, with interest thereon (or as security for the payment of obligation, describing it, etc.).

1. Comp. Laws 1908, § 2063.

**5956. Tennessee—Statutory form of mortgage.**

I hereby convey to — the following land (describing it), to be void upon condition that I pay, etc.

1. Code 1896, § 3680.

**5957. Tennessee—Statutory deed of trust.**

For the purpose of securing to — a note of this date, due at twelve months, with interest from date (or as the case may be), I hereby convey to —, in trust, the following property (describing it). And if the note is not paid at maturity, I hereby authorize — to sell the property herein conveyed (stating the manner, place of sale, notice, etc.), to execute a deed to the pur-

chaser, to pay off the amount herein secured, with interest and costs, and to hold the remainder subject to my order.

1. 1 Code 1896, § 3680.

#### **5958. Tennessee—Form of Satisfaction.**

I (or we) declare that I am (or we are) the true and lawful holder (or holders) of the claim (or part of the claim, and specifying what part) secured by the instrument within recorded, and hereby acknowledge the satisfaction thereof and discharge of the lien to secure the same in full (or if one part, state what part). This — day of —.

#### **5959. Utah—Statutory form of mortgage.**

A B, mortgagor (here insert name or names and place of residence), hereby mortgages to C D, mortgagee (here insert name or names and place of residence), for the sum of — dollars, the following tract— of land in — county, Utah (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amounts and form of indebtedness, maturity, rate of interest, by and to whom payable, and where).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of — dollars attorney's fee in case of foreclosure.

Witness the hand of said mortgagor this — day of —, —.

1. Comp. Laws 1907, § 1983.

#### **5960. Virginia and West Virginia—Statutory form of deed of trust.**

This deed, made the — day of —, in the year —, between — (the grantor), of the one part, and — (the trustee), of the other part, witnesseth, that the said — (the grantor) doth (or do) grant unto the said — (the trustee) the following property (here describe it). In trust, to secure (here describe the debts to be secured, or the sureties to be in-

demnified, and insert covenants, or any other provisions the parties may agree upon).

Witness the following signatures and seals.

1. Code (Va.) 1904, § 2441.
2. Code (W. Va.) 1906, ch. 72, § 3052.

**5962. West Virginia—Deed of trustee upon sale under deed of trust.**

This deed, made the —— day of ——, between ——, trustee, of the first part, and ——, of the second part, witnesseth, whereas the said trustee, by virtue of the authority vested in him by the deed of trust hereinafter mentioned (or by an order of the circuit court of the county of ——, made on the —— day of —— as the case may be), did sell, as required by law, a certain tract (or lot, as the case may be), of land, situate in the county (or city, town or village, as the case may be) of ——, conveyed by —— (the grantor) to the said ——, trustee, by deed bearing date the —— day of ——, and recorded in deed book ——, on page ——, in the office of the clerk of the county court of the county of ——, and bounded and described therein as follows (here insert the description and quantity as set forth in the deed of trust and any further description deemed necessary). And whereas at such sale the said —— purchased the said property for the sum of —— dollars. Now, therefore, this deed witnesseth, that the said ——, trustee as aforesaid, doth grant unto the said —— the said real estate hereinbefore described.

Witness the following signature and seal.

———, Trustee.  
[L. S.]

1. Code 1906, ch. 72, § 3057.

**5963. Wisconsin—Statutory form of mortgage.**

A B, mortgagor, of —— county, Wisconsin, hereby mortgages to C D, mortgagee, of —— county, Wisconsin, for the sum of —— dollars, the following tract of land in —— county (here describe the premises).

This mortgage is given to secure the following indebtedness (here state amount or amounts, and form of indebtedness,



whether on note, bond or otherwise, time or times when due, rate of interest, by and to whom payable, etc.).

The mortgagor agrees to pay all taxes and assessments on said premises, and the sum of —— dollars, attorney's fees, in case of foreclosure thereof.

Witness the hand and seal of said mortgagor this —— day of ——, 19——.

In the presence of

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ [L. S.]  
\_\_\_\_\_ [L. S.]

1. Ann. Stat. 1898, § 2209.

#### 5964. Wyoming—Mortgage deed—Statutory form.

A B, mortgagor, (here insert the name or names and place of residence of the mortgagor or mortgagors) to secure the payment of (here insert the amount of the mortgage indebtedness, when due, rate of interest, and whether or not a note has been given therefor), do hereby mortgage to C D, mortgagee, (here insert the name and place of residence of the mortgagee) the following described real estate situate in the —— county of (here insert the name of the county in which the land is mortgaged or situated) state of Wyoming, to wit: (here insert a description of the property mortgaged). The mortgagor agrees to pay all taxes and assessments on said premises and to keep the buildings thereon insured in a sum not less than (here insert the amount of the insurance to be carried) during the life of this mortgage, in favor of and payable to the mortgagee; and in case the mortgagor shall fail to pay such taxes and assessments, and to keep said premises insured as aforesaid, the mortgagee may insure said buildings and pay said taxes and assessments and all sums so paid shall be added to and considered as a part of the above indebtedness hereby secured, and shall draw interest at the same rate. In case default shall be made in the payment of the above sum hereby secured, or in the payment of the interest thereon, or any part of such principal or interest, when the same shall become due, or in case default shall be made in any of the

covenants and agreements hereof, then the whole indebtedness hereby secured, with the interest thereon, shall become due and payable, and the mortgagee may proceed, pursuant to law, to foreclose on and sell said property, and out of the proceeds of such sale he shall pay all sums due hereunder, together with all costs of sale and foreclosure including — dollars as attorney's fees.

(And where the right of homestead is released, add the following:) Hereby relinquishing and waiving all rights under and by virtue of the homestead exemption laws of said state.

Dated this — day of —, A. D. —.

In presence of —. — A B.

1. Comp. Stat. 1910, § 3666.

#### 5965. Wyoming—Cancellation of mortgage—Statutory form.

This certifies that a (mortgage, or deed of trust, as the case may be) from — to —, dated —, A. D. 19—, and recorded in book — of —, on page —, has been fully satisfied by the payment of the debt secured thereby, and is hereby canceled and discharged. —. Signed in the presence of —, county clerk of — county.

Filed and recorded —, A. D. 19—, at —, — M.

\_\_\_\_\_,  
County Clerk.

1. Comp. Stat. 1910, § 3669.

#### 5966. Wyoming—Statutory form of deed of trust.

This deed, made the — day of —, 19—, between — (the grantor), of the one part, and — (the trustee), of the other part, witnesseth, that the said — (the grantor) doth (or do) grant unto the said — (the trustee) the following property (here describe it), in trust, to secure (here describe the debts to be secured or the sureties to be indemnified, and insert covenants or any other provisions the parties may agree upon).

Witness the following signatures and seals.

1. Comp. Stat. 1910, § 3688.

**5967. Wyoming—Form of deed upon sale under trust deed—Statutory.**

This deed, made the —— day of ——, between A B, trustee, of the first part, and C D, of the second part: whereas, the said trustee, by virtue of the authority vested in him by the deed of trust hereinafter mentioned (or by an order of the district court of the county of ——), made on the —— day of —— (as the case may be), did sell as required by law a certain tract (or lot, as the case may be) of land, situated in the county (or city, town, or village, as the case may be) of ——, conveyed by E F to the said A B, trustee, by deed bearing date the —— day of ——, and recorded (if it be recorded) in deed book ——, on page ——, in the office of the recorder of the county of ——, and bounded and described therein as follows (here insert the description and quantity as set forth in the deed of trust and any further description deemed necessary); at which sale the said C D became the purchaser, for the sum of —— dollars: Now, therefore, this deed witnesseth, that the said trustee hereby conveys and grants to the said C D the said real estate hereinbefore described, with all the right, title, and interest held by the said E F therein: To have and to hold the said real estate and premises unto the said C D, his heirs and assigns, forever.

Witness the following signature and seal.

————— [Seal]

1. Comp. Stat. 1910, § 3691.

**CHATTEL MORTGAGES.****5968. General form without warranty.**

Know all men by these presents that I, —— of ——, hereby sell and assign to —— of —— all the furniture and books now in my office at ——. This grant is intended to secure the payment of —— dollars with interest, on or before the expiration of —— months from the date hereof, which payment, if duly made, will render this conveyance void.

In witness, etc.

1. See ante, vol. 5, § 4765.

**5969. Another form with stipulation for sale.**

Know all men by these presents, etc.

This grant is intended to secure the payment of — dollars with interest, on or before the expiration of — months from the date hereof, and I do hereby mortgage, sell and assign to the said — all my property of every description now in my office at No. — street, in the city of —; and I do hereby authorize and empower the said — to take possession of said property and effects, to sell the same and to appropriate the proceeds to the payment of said debt and interest.

In witness, etc.

1. See ante, vol. 5, § 4843.

**5970. Description in chattel mortgage of farming stock and growing crops.**

And all and singular the wagons, carts, carriages and other implements of husbandry, corn, hay, straw, manure, horses, cattle and other live and dead farming stock, upon or in or about the farm, farm house and buildings, now in the occupation of the said mortgagor in the town of —, county of —, or any of them.

1. See ante, vol. 5, §§ 4782, 4783.

**5971. Description of household furniture.**

And all and singular the furniture, plate, plated articles, linen, glass, china, books, works of art, household effects and articles of use and ornament, which now are or hereafter shall be in, upon or about the dwelling-house now occupied by the said mortgagor, numbered —, in — street, in the county of —.

1. See ante, vol. 5, § 4790.

**5972. Description of future property.**

And it is hereby agreed and declared that all the stock in trade which the said mortgagor may from time to time hereafter, during the continuance of this mortgage, add to or incorporate with his present stock, or which shall from time to time during the continuance of this mortgage be in, upon or about the store or building occupied by the said grantor for the purpose of trade, shall be included in this mortgage, and be subject to the provisions

and covenants herein contained; and the said mortgagor shall upon request execute a further mortgage of such after-acquired property in terms similar to these presents, to the intent that such after-acquired property shall be effectually held as a security for the payment of the debt hereby secured.

1. See ante, vol. 5, § 4792.

**5973. Power of mortgagee of furniture to enter and inspect.**

And that it shall be lawful for —, his executors, administrators and assigns, and his and their agents, at all reasonable times during the continuance of this security, to enter into said building and to take schedules and inventories of the furniture comprised in this mortgage, and also to give notice of any defect in the repair of the same to the mortgagor, his executors, administrators or assigns, and that he or they shall thereupon, without delay, put the same in good repair.

**5974. Covenant in chattel mortgage that mortgagee may enter and view the property.**

And that the said mortgagee, his executors, administrators and assigns may, at all reasonable times, so long as any money shall remain unpaid on this security, enter into the said dwelling-house to view the condition of the said mortgaged property, and of any want of repair or dilapidation thereof, and may give or leave the said mortgagor, his executors, administrators or assigns notice in writing to repair or restore the same; and upon such notice being given or left, the said mortgagor, his executors, administrators or assigns shall forthwith repair or restore the same in accordance with such notice.

**5975. Covenant of mortgagor not to remove mortgaged goods.**

And the said mortgagor doth hereby for himself, his executors and administrators covenant with said mortgagee, his executors, administrators and assigns, that he will not, during the continuance of this security, remove the said stock in trade, or fixtures or any part thereof. Provided, however, that the said mortgagor, his executors, administrators or assigns may use,

employ and dispose of the said stock in trade in the usual course of business, but so that the total value of such stock in trade for the time being comprised in this security shall at all times be maintained and kept up to the present value thereof. (Provided that the said mortgagor, his executors, administrators and assigns shall account for and pay over to the said mortgagee, his executors, administrators and assigns the proceeds of all goods sold from said stock in trade immediately upon the sale thereof.)

**5976. California—Statutory form of mortgage of personal property.**

This mortgage, made the — day of —, in the year —, by — of —, by occupation a —, mortgagor, to — of —, by occupation a —, mortgagee, witnesseth, that the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars on (or before) the — day of —, in the year —, with interest thereon (or as security for the payment of a note or obligation), (describing it, etc.).

1. Civ. Code 1906, § 2956. The kinds of personal property that can be mortgaged are limited by statute in California. Civ. Code 1906, § 2955.

**5977. Chattel mortgage in common use.**

This mortgage, made the — day of —, in the year 19—, by — of —, county of —, state of —, by occupation —, mortgagor, to — of the county of —, state of —, by occupation —, mortgagee, witnesseth, that the said mortgagor mortgages to the said mortgagee all that certain personal property situated and described as follows, to wit, (here describe the property), as security for the payment to —, the said mortgagee, of — dollars, of the United States of America, on — day of —, 19—, with interest thereon at the rate of — per cent. per —, according to the terms and conditions of — certain promissory note, of even date herewith, and in the words and figures following, to wit:

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above-written.

Signed, sealed and delivered in the presence of — and —.

The mortgagor in the foregoing mortgage named — and —, the mortgagees in the mortgage named, each being duly sworn, each for himself, doth depose and say, that the aforesaid mortgage is made in good faith and without any design to hinder, delay or defraud any creditor or creditors.

Subscribed and sworn to before me this — day of —, 19—.

**5978. Illinois—Form of chattel mortgage with affidavit.**

Know all men by these presents, that —, of the town of —, in the county of — and state of —, in consideration of the sum of — dollars to — paid by — of the county of — and state of —, the receipt whereof is hereby acknowledged, do hereby grant, sell, convey and confirm unto the said — and to his heirs and assigns the following goods and chattels, to wit:

To have and to hold all and singular the said goods and chattels, unto the said mortgagee herein, and his heirs, executors, administrators and assigns to his and their sole use, forever. And the mortgagor herein, for him and for his heirs, executors and administrators, does hereby covenant to and with the said mortgagee, his heirs, executors, administrators and assigns, that said mortgagor — lawfully possessed of the said goods and chattels, as of his own property; that the same are free from all encumbrances, and that he will, and his executors and administrators shall, warrant and defend the same to —, the said mortgagee, his heirs, executors, administrators and assigns, against the lawful claims and demands of all persons.

Provided, nevertheless, that if the said mortgagor, his executors or administrators, shall well and truly pay unto said mortgagee, his executors, administrators or assigns, — then this mortgage is to be void, otherwise to remain in full force and effect.

And, provided, also, that it shall be lawful for the said mortgagor, his executors, administrators and assigns to retain possession of the said goods and chattels, and at his own expense,

to keep and use the same, until he or his executors, or administrators or assigns, shall make default in the payment of the said sum of money above specified, either in principal or interest, at the time or times, and in the manner hereinbefore stated. And the said mortgagor hereby covenants and agrees that in case default shall be made in the payment of the note aforesaid, or of any part thereof, or the interest thereon, on the day or days respectively on which the same shall become due and payable; or if the mortgagee, his executors, administrators or assigns shall feel —— insecure or unsafe, or shall fear diminution, removal or waste of said property; or if the mortgagor shall sell or assign, or attempt to sell or assign, the said goods and chattels, or any interest therein; or if any writ, or any distress warrant, shall be levied on said goods and chattels, or any part thereof; then and in any or either of the aforesaid cases, all of said note and sum of money, both principal and interest, shall, at the option of the said mortgagee, his executors, administrators or assigns, without notice of said option to any one, become at once due and payable, and the said mortgagee, his executors, administrators or assigns, or any of them, shall thereupon have the right to take immediate possession of said property, and for that purpose may pursue the same wherever it may be found, and may enter any of the premises of the mortgagor, with or without force or process of law, wherever the said goods and chattels may be, or be supposed to be, and search for the same, and if found, to take possession of, and remove, and sell, and dispose of the said property, or any part thereof, at public auction, to the highest bidder, after giving —— days' notice of the time, place and terms of sale, together with a description of the property to be sold, by notices posted up in three public places in the vicinity of such sale, or at private sale, with or without notice, for cash or on credit, as the said mortgagee, his heirs, executors, administrators or assigns, agents or attorneys, or any of them, may elect; and, out of the money arising from such sale, to retain all costs and charges for pursuing, searching for, taking, removing, keeping, storing, advertising and selling such goods and chattels, and all prior liens thereon, together with the



amount due and unpaid upon said note, rendering the surplus, if any remain, unto said mortgagor, or his legal representatives.

Witness, the hand and seal of the said mortgagor, this — day of — in the year of our Lord one thousand nine hundred —.

**5979. Illinois—Affidavit by mortgagor of clear title.**

STATE OF ILLINOIS, }  
COUNTY OF —, } ss.

—, of said — county, being duly sworn, deposes and says: That — the lawful owner of the goods and chattels described in the within chattel mortgage to which this is attached, and made a part thereof; and that said goods and chattels are free and clear of all liens or encumbrances, except the said mortgage to which this paper is attached. And that there are no judgments or executions against —, the said —, that affect the title of said goods and chattels named in said mortgage.

By and under the foregoing representation I have obtained a loan of — dollars (\$—), of which said chattel mortgage is given to secure the payment and interest.

————— (Seal.)

Subscribed and sworn to before me, this — day of —, 19—.

**5980. Kansas—Form of chattel mortgage with form of affidavit to continue security beyond one year.**

Know all men by these presents, that — of — county, Kansas, party of the first part —, is indebted to —, of the second part in the sum of — dollars. Now, therefore, in consideration of such indebtedness, and to secure the payment of the same, as aforesaid, the said party of the first part doth hereby sell, assign, transfer and set over to said party of the second part the property described in the following schedule, viz.: —.

Provided, however, that if said debt and interest be paid as above specified, this sale and transfer shall be void. The property sold is to remain in possession of said party of the first part until default be made in the payment of the debt and inter-

est aforesaid, or some part thereof; but in case of a sale or disposal or attempt to sell or dispose of the same, or a removal of or attempt to remove the same from — or an unreasonable depreciation in the value, or if from any other cause the security shall become inadequate, the said party of the second part may take said property or any part thereof into his own possession. And upon taking said property into his possession, either in case of default or as above provided, said party of the second part shall sell the same at public sale, and after satisfying the aforesaid debt and interest thereon, and all necessary and reasonable costs, charges and expenses incurred, out of the proceeds of sale, he shall return the surplus to said party of the first part, or his legal representatives. And if from any cause said property shall fail to satisfy said debt and interest aforesaid, said party of the first part hereby agrees to pay the deficiency.

In witness whereof, the said party of the first part has hereunto set his hand this — day of —, 19—.

STATE OF KANSAS,     }  
COUNTY OF —,       } ss.

I do solemnly swear that I am one of the within-named mortgagees, and that the property described in the within mortgage was, on the — day of —, 19—, conveyed to — to secure the payment of — dollars, of which sum there is yet due and unpaid the sum of — dollars. So help me God.

Subscribed and sworn to before me this — day of —, 19—.

My commission expires —, 19—.

This affidavit filed this — day of —, 19—, at — o'clock, — M., and entered in Vol. —, page —.

Register of Deeds.

1. This affidavit must be made within thirty days next preceding the expiration of one year from the filing of this mortgage, and each year thereafter, or after the expiration of one year from such filing will be void as against subsequent purchasers and mortgagees in good faith.

**5981. Maryland—Statutory form of mortgage of personal property.**

I, —, of — county, Maryland, being now indebted to —, of — county, in the sum of — dollars, with interest from —, in consideration thereof, do hereby bargain and sell to the said — the following property (here describe property); provided that if I, the said —, shall pay to the said — the sum of — dollars, with the interest thereon, on or before the — day of —, then these presents shall be void.

Witness my hand and seal this — day of —.

1. Pub. Gen Laws 1904, art. 21, § 62.

**5982. Maryland—Chattel mortgage.**

This chattel mortgage, made this — day of —, 19—, by —

Witnesseth, that for and in consideration of the sum of — dollars the said — doth hereby bargain and sell unto — the following property:

Provided, however, if the said — shall pay the said — the aforesaid sum of — dollars, with interest, on or before the — day of —, 19—, then these presents shall be void.

And it is also agreed that until default be made in the payment of the aforesaid sum of — dollars, with interest, the said — shall possess the property hereby. But in case of default, then the said — does hereby declare assent to the passing of a decree for the sale of the property hereby mortgaged in accordance with Act of 1898, chapter 123, sections 720 to 732, inclusive.

In testimony hereof, witness the hand and seal of the said mortgagor. (Seal.)

STATE OF MARYLAND, }  
CITY OF BALTIMORE, } ss.

I hereby certify that on this — day of —, in the year one thousand nine hundred and —, before me, a — of the state of Maryland, in and for the city aforesaid, personally appeared —, the mortgagor named in the foregoing mortgage, and —

acknowledged the foregoing mortgage to be — act. At the same time also appeared —, and made oath in due form of law, that the consideration set forth in said mortgage is true and bona fide as therein set forth.

**5983. New York—Chattel mortgage with power of sale—Short form.**

To all whom these presents shall come, greeting: Know ye that whereas I, — of —, am indebted unto — of — in the sum of — dollars and — cents, being for goods sold and delivered to me: Now, for securing the payment of the said debt, and interest from the date hereof, to the said —, I do hereby sell, assign and transfer to the said — all the goods, chattels and property described in the following schedule, namely, etc. Said property now being and remaining in the possession of myself, at my store numbered —, on — street, at said —.

Provided always, and this mortgage is on the express condition, that if the said — shall pay to the said — the sum of — dollars, with interest as follows, etc., which said sum and interest the said — hereby covenants to pay, then this transfer to be void and of no effect; but in case of nonpayment of the said sums at the time or times above mentioned, together with interest, then the said — shall have full power and authority to enter upon the premises of the said party of the first part, or any other place or places where the goods and chattels aforesaid may be, to take possession of said property, to sell the same, and the avails (after deducting all expenses of the sale and keeping of the said property) to apply in payment of the above debt; and in case the said — shall at any time deem himself unsafe, it shall be lawful for him to take possession of such property and sell the same at public or private sale, previous to the time above mentioned for the payment of said debt, and apply the proceeds as aforesaid, after deducting all expenses of the sale and keeping of said property. If from any cause said property shall fail to satisfy said debt, interest, costs

and charges, the said — hereby covenants and agrees to pay the deficiency.

In witness whereof, etc.

**5984. North Carolina—Statutory form of chattel mortgage.**

I, —, of the county of —, in the state of North Carolina, am indebted to —, of — county, in said state, in the sum of — dollars, for which he holds my note to be due the — day of —, 19—, and to secure the payment of the same I do hereby convey to him these articles of personal property, to wit: — but on this special trust, that if I fail to pay said debt and interest on or before the — day of —, 19—, then he may sell said property, or so much thereof as may be necessary, by public auction, for cash, first giving twenty days' notice at three public places, and apply the proceeds of such sale to the discharge of said debt and interest on the same, and pay any surplus to me.

Given under my hand and seal this — day of —, 19—.

1. Revisal 1908, § 1039. Household furniture, id., § 1041.

**5985. North Dakota—Statutory form of mortgage of personal property.**

This mortgage, made the — day of —, in the year —, by A. B., of —, by occupation —, mortgagor, to C. D., — of —, by occupation a —, mortgagee, witnesseth, that the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars on (or before) the — day of —, in the year —, with interest thereon (or security for the payment of a note or obligation, describing it, etc.).

A. B.

1. Rev. Codes 1905, § 6180.

**5986. Oklahoma—Form of mortgage of personal property.**

This mortgage, made the — day of — in the year — by A. B., of —, by occupation a —, mortgagor, to C. D., of —, by occupation a —, mortgagee, witnesseth: That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of — dollars, on

(or before) the — day of — in the year — with interest thereon (or security for the payment of a note or obligation describing it, etc.).

A. B.

1. Comp. Laws 1909, § 4415.

**5987. Pennsylvania—Statutory form of chattel mortgage.**

To all to whom these presents shall come, greeting: Know ye that — —, indebted unto — — in the sum of — dollars and — cents, being for — —. Now for securing the payment of the said debt, and the interest from the date hereof, to the said — —, do hereby sell, assign and transfer to the said — — all the goods, chattels and property described in the following schedule, namely: Said property now being and remaining in the possession of — —: Provided always, and this mortgage is on the express condition, that if the said — — shall pay to the said — — the sum of — with interest, as follows, namely: —, which said sum and interest the said — — hereby covenant to pay, then this transfer to be void and of no effect; but in case of nonpayment of the said sum, at the time or times above mentioned, together with interest, —, then the said — — may give to the said — —, or the person in possession of the property claiming the same, written notice as required by law of — intention to foreclose this mortgage for breach of the condition thereof; and if the said sum is not then paid, the said — — shall have full power and authority to enter upon the premises of the said party of the first part, or any other place or places where the goods and chattels aforesaid may be, to take possession of said property, to sell the same according to law, and the avails, after deducting all expenses of the sale and keeping of the said property, to apply in payment of the above debt: if from any cause said property shall fail to satisfy said debt, interest, costs and charges, the said — — covenant and agree to pay the deficiency.

In witness whereof, — ha— hereunto set — hand and

seal, the —— day of ——, in the year of our Lord one thousand nine hundred and ——.

Sealed and delivered in the presence of ——, ——, ——.  
 \_\_\_\_\_ (Seal.)

1. 1 Purdon's Dig. of Stats. 1905, p. 1201, § 239. Only certain articles of personal property enumerated by the statute can be mortgaged. Id.

Both parties may include in the mortgage any covenant not inconsistent with the provisions of the act. Id.

**5988. South Dakota—Statutory form of mortgage of personal property.**

This mortgage, made the —— day of ——, in the year ——, by A. B., of ——, by occupation a ——, mortgagor, to C. D., of ——, by occupation a ——, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars, on (or before) the —— day of ——, in the year ——, with interest thereon (or security for the payment of a note or obligation, describing it, etc.).

1. Comp. Laws 1908, § 2073.

**5988a. Washington—Mortgage for one hundred dollars or less.**

This mortgage, made this —— day of —— in the year 19——, by A B of ——, mortgagor, to C D of ——, mortgagee, witnesseth, that the mortgagor mortgages to the mortgagee (here describe the property) as security for the payment to him of —— dollars, on (or before) the —— day of —— in the year ——, with interest thereon (or security for the payment of a note or obligation, describing it).

1. Rem. & Ball. Code 1910, § 3664.

**5989. Mortgage of a policy of insurance made upon the life of mortgagor.**

Indenture made this —— day of ——, between —— of ——, the mortgagor, first party, and —— of ——, the mortgagee, second party,

Whereas the said mortgagor has effected a policy of insurance on his own life in the —— Mutual Life Insurance Company of the sum of —— dollars, dated the —— day of ——, 19——,

and numbered —, upon which there is payable the annual premium of — dollars; and whereas the said mortgagee has agreed with the said mortgagor to loan him the sum of — dollars, payable with interest thereon, as hereinafter mentioned, upon the security of said policy:

Now this indenture witnesseth, that in pursuance of said agreement, and in consideration of the said sum of — dollars now paid to the said mortgagor by the said mortgagee, the receipt whereof is hereby acknowledged, the said mortgagor hereby assigns unto the said mortgagee, his executors, administrators and assigns all that said recited policy of insurance, and all the moneys to become payable thereunder, to hold unto the said mortgagee, his executors, administrators and assigns, subject to redemption as hereinafter provided.

And the said mortgagor hereby covenants with the said mortgagee, his executors, administrators and assigns, that he will not do or suffer anything whereby the said policy may become void or voidable; that if the said policy, or any new policy to be effected as hereinafter mentioned, has or shall become void, the said mortgagor will immediately thereupon, at his own cost, effect, or enable the said mortgagee, his executors, administrators or assigns to effect, a new policy on his life in his or their name or names, in such sum as the policy which has become void was taken for; and that every such substituted policy, and the moneys to become payable thereunder, shall be subject to this security, and the provisions herein contained in relation to the said original policy; and further, that the said mortgagor will, during the continuance of this security, punctually pay the annual premium necessary for keeping on foot the said original policy and any substituted policy, and will forthwith deliver the receipt therefor to the said mortgagee, his executors, administrators and assigns; and that if the said mortgagor shall at any time refuse or neglect to make any of the payments aforesaid, it shall be lawful for the said mortgagee, his executors, administrators or assigns to pay the same; and that all moneys paid by him or them in keeping on foot the said original or any substituted policy, with interest therefor at the rate of — per cent.



per annum from the time when the same shall have been paid, shall be repaid to him or them by the said mortgagor, his heirs, executors or administrators, on demand, and, until such repayment, shall become a charge upon said original or substituted policy hereunder.

Provided always, that, if the said mortgagor, his executors, administrators or assigns shall pay to the said mortgagee, his executors, administrators or assigns the sum of — dollars, in — years from this date, with interest thereon at the rate of — per cent. per annum, payable semiannually, then this mortgage shall be void.

But upon any default in the payment of the money, or the interest thereon, the said mortgagee, his executors, administrators or assigns may sell the said premises hereby mortgaged, either by public auction or private contract, or may surrender the said policy of insurance to the insurance company, first having given written notice of his intention to make such sale or surrender to the said mortgagor, his executors, administrators, or assigns, or left a written notice at his or their usual or last known place of abode or business, at least — weeks before making such sale or surrender; provided, however, that the purchaser at such sale, or the company taking such surrender, shall not be bound to see or inquire whether such default has been made or such notice given, but the receipt of the said mortgagee, his executors, administrators or assigns shall be an effectual discharge for the purchase-money, or surrender value of said policy. Out of the moneys arising from such sale or surrender, the said mortgagee, his executors, administrators or assigns shall be entitled to retain all sums then secured by this mortgage, whether then or thereafter payable, with all costs and expenses incurred in or about such sale or in respect of the premises, rendering the surplus, if any, to the said mortgagor, his executors, administrators or assigns.

In witness, etc.

#### 5990. Mortgage of letters patent.

Indenture made the — day of —, 19—, between — of —, the mortgagor, of the one part, and — of —, the

mortgagee, of the other part. Whereas letters patent of the United States, dated the — day of —, 19—, and numbered —, for an improvement in the construction and manufacture of — were granted to the said mortgagor, his executors, administrators and assigns; and whereas by an agreement bearing even date herewith, made between the parties hereto, it was agreed and declared that the said mortgagee should advance to the said mortgagor such sums of money as the mortgagor might require for the purpose of introducing and developing the said invention, not exceeding — dollars, and that the mortgagor should appoint the mortgagee his sole agent for the sale of articles manufactured under the said patent for the duration of the said letters patent, or any extension thereof, with certain privileges and advantages as such agent as therein mentioned:

Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of — dollars (part of the said sum of — dollars) to the mortgagor now paid by the mortgagee, the receipt of which said sum of — dollars the mortgagor hereby acknowledges, the mortgagor hereby assigns unto the mortgagee, his executors, administrators and assigns all that recited invention and letters patent, and all and singular the benefits, privileges and advantages of, arising out of, or to be derived from, the said invention and letters patent, and the full benefit of all future and other letters patent, or extension thereof, or other privileges for or in respect of the said invention, or for any improvements therein, and all the right, title, interest and demand of the mortgagor to or in the same: To have, hold, receive and take the said invention and letters patent hereby assigned, or expressed so to be, unto the mortgagee, his executors, administrators and assigns, subject, nevertheless, to the proviso for redemption hereinafter contained. Provided always, that if the mortgagor, his heirs, executors, administrators or assigns shall, on the — day of —, 19—, pay to the mortgagee, his executors, administrators or assigns the said sum of — dollars, and also on demand pay to them or him every other sum of money which may hereafter be advanced or paid by them or him to or on account of the mort-

gagor, his executors, administrators or assigns, with interest thereon from the time the same shall be advanced or paid to the mortgagor, at the rate of — per cent. per annum, payable semiannually, then this deed and any note or other obligation for said sum or other sums so advanced shall be void.

If default shall be made in payment of any part of the moneys intended to be hereby secured, it shall be lawful for the mortgagee, his executors, administrators or assigns, at any time thereafter, to take possession of the said premises hereby assigned, or expressed so to be. And the mortgagor hereby, for himself, his heirs, executors and administrators, covenants with the mortgagee, his executors, administrators and assigns, that he, the mortgagor, his executors, administrators or assigns will not, during the continuance hereof, do or omit to do any act, or make any payment, whereby the said letters patent, or any other letters patent which may be subject hereto, may become invalidated, avoided or avoidable; and further, that the said letters patent are valid and effectual, and are in no wise invalidated, avoided or avoidable, and that the mortgagor now has power to assign the same unto the mortgagee, his executors, administrators and assigns, in manner aforesaid, free from encumbrances; and further, that the mortgagor, and all persons having, or lawfully or equitably claiming, any estate or interest in the said premises, or any of them, will at all times, at their own cost, during the continuance hereof, and afterward at the cost of the person or persons requiring the same, execute and do every such assurance and thing for the better and more perfectly assigning and assuring the said premises hereby assigned, or expressed so to be, unto the mortgagee, his executors, administrators and assigns, and enabling him and them to have possession of and enjoy the same respectively, according to the true intent and meaning hereof, as may be reasonably required. It shall be lawful for the mortgagee, or his executors, administrators or assigns, at any time or times after the said — day of —, without any consent on the part of the mortgagor, his executors, administrators or assigns, or further notice to him or them, to grant such general or special and other license or licenses,

or exercise and use the said patent hereinbefore assigned, or expressed so to be, for such term, on such conditions, and in such manner, as he or they shall think fit; and also, without further notice, to sell the said patent hereinbefore assigned, or expressed so to be, or any part or parts thereof, either together or in lots, and either by public auction or private contract, and either with or without special or other conditions or stipulations, with power to buy in the said premises or any part thereof, and with power also to execute assurances, give effectual receipts for the purchase-money, and do all other acts and things for completing the sale which the persons or person selling as aforesaid shall think proper. The persons or person selling as aforesaid shall, with and out of the moneys to arise from such sale, and from the granting such licenses as aforesaid, in the first place pay and retain the costs and expenses attending such sale, or otherwise incurred in relation to this security, and in the next place pay and satisfy the moneys which shall then be owing on the security of these presents, and shall pay the surplus (if any) to the mortgagor, his executors, administrators or assigns. The aforesaid power of granting licenses and of sale respectively may be exercised by any persons or person for the time being entitled to receive and give a discharge for the moneys then being due and owing on the security of these presents.

In witness, etc.

1. As to subject-matter of chattel mortgage, see ante, vol. 5, §§ 4683-4692.

#### 5991. Mortgage bill of sale of registered vessel.

To all to whom these presents shall come, greeting: Know ye, that we, — and —, both of —, county of —, in the state of —, are held and firmly bound unto — of —, in the county of — and state of —, in the just and full sum of — dollars; for the payment of which sum, well and truly to be made, we hereby bind ourselves, and our heirs, executors and administrators.

Dated at —, this — day of —, in the year of our Lord one thousand nine hundred and —.

Whereas said — this day lent and advanced unto the said — and — the sum of — dollars, on the body, tackle and

appurtenances of the good ship —, of the burden of — tons, the said — and —, being the sole owners of said ship —:

Now the condition hereof is, that if the said — and — shall pay, or cause to be paid, to the said — in — years from the date hereof the sum of — dollars (the amount loaned), and interest thereon at the rate of — per cent. per annum, payable semiannually, then this obligation to be void; otherwise, to be and remain in full force and virtue. And in consideration of, and as security for, said loan as aforesaid, the said ship — is, by these presents, assigned, pledged, mortgaged, set over and conveyed to the said —, his heirs and assigns the certificate of the registry of which vessel is as follows, viz. (recite the registry at length).

In case any part of the amount of said loan and interest, according to the terms hereof, shall remain due and unpaid to said —, mortgagee, his executors, administrators or assigns, after the expiration of — years from the date hereof, he or they may take possession of said ship — and appurtenances, and sell the same at public auction, in order to satisfy what may then remain due, without any proceedings in court or otherwise for the purpose thereof, and thereupon may execute and deliver a sufficient bill of sale to transfer completely to any purchaser or purchasers all title and property in and to the said ship — and appurtenances to the said — and —, mortgagors, as owners thereof, now belonging; the said —, mortgagee, thereupon to account to the said — and —, mortgagors, for any surplus of such sale after paying all charges and expenses. And in case of such sale as aforesaid, the said — and —, mortgagors, their executors, administrators or assigns, shall, whenever thereto requested, make, execute and deliver to such purchaser or purchasers another bill of sale of said ship — and appurtenances, in which the register (or enrolment as the case may be) shall be recited as above, for the transferring completely to said purchaser or purchasers all the rights, interests and claims of said — and —, mortgagors, their executors, administrators or assigns, as owners of said ship —. And in default

of the prompt execution and delivery of such other bill of sale to such purchaser or purchasers by the said — and —, mortgagors, when thereto requested, the said —, mortgagee, is hereby constituted and appointed the legal attorney of the said — and —, mortgagors, for the purpose of making, executing and delivering such bill of sale; and the said — and —, mortgagors, hereby ratify and confirm the act of the said —, mortgagee, as their attorney for said purpose.

Insurance shall be made at some office in — on the said ship —, for the security of the said —, mortgagee, to an amount not less than the sum loaned as aforesaid, and the said —, mortgagee, is hereby authorized to procure such insurance at the expense of the said — and —, mortgagors, if not seasonably obtained by them.

Signed, sealed and delivered in presence of —. (To be acknowledged.)

1. See also, *BILLS OF SALE, AGREEMENTS TO SELL and CONDITIONAL SALES*, ante, 5395 et seq.

2. A mortgage of an enrolled vessel is the same, except that a copy of the enrollment is inserted instead of a copy of the registry.

### 5992. Mortgage of legacy.

Indenture made the — day of —, 19—, between — of —, of the one part, the mortgagor, and — of —, of the other part, the mortgagee. Whereas — of —, deceased, the father of the said mortgagor, by will dated the — day of —, 19—, bequeathed unto the said mortgagor the sum of — dollars, to be paid when he should attain the age of twenty-one years, and appointed — and — executors of his said will; and whereas said will was duly proved by the said executors on the — day of —, in the probate court of —; and whereas the said mortgagor attained his age of twenty-one years on the — day of —; and whereas the said legacy has not yet been paid, and the said mortgagee has agreed to lend the said mortgagor the sum of — dollars, at interest, on the security thereof:

Now this indenture witnesseth, that, in consideration of the sum of — dollars this day paid by the said mortgagee to the said mortgagor (the receipt whereof the said mortgagor hereby

acknowledges), he the said mortgagor covenants with the said mortgagee to pay him, his executors, administrators or assigns, on the — day of —, 19—, the sum of — dollars, with interest thereon in the meantime at the rate of — per centum per annum; and also, so long after that day as any principal money shall remain due hereunder, to pay to the said mortgagee, his executors, administrators or assigns, interest thereon at the same rate by equal half-yearly payments, on the — day of — and the — day of — in every year; and that, for the consideration aforesaid, said mortgagor hereby assigns unto the said mortgagee all that aforesaid legacy or sum of — dollars, and all moneys to become due and payable in respect thereof; together with full power to demand, sue for, recover, receive and give effectual discharges therefor in the name or names of the said mortgagor, his executors or administrators, or otherwise: To hold the said legacy and other the premises hereby assigned unto the said mortgagee, his executors, administrators and assigns, upon trust to receive the same, and thereout in the first place to pay all costs and expenses of and incidental to obtaining payment thereof, and in the next place to retain to himself and themselves all principal moneys and interest which shall then be due to him or them under or by virtue of this security; and to pay the surplus (if any) of the said legacy and premises unto the said mortgagee, his executors, administrators or assigns.

In witness, etc.

1. See also, ASSIGNMENTS, ante, 5261-5273, 5287.

### 5993. Mortgage of simple debt.

Indenture made this — day of —, between —, the borrower, and —, the lender. Whereas — of —, is indebted to the borrower in the sum of — dollars on a certain contract (described). And whereas the borrower has requested the lender to loan him the sum of — dollars secured by a conditional assignment of said debt. Now this indenture witnesseth as follows: In pursuance of said agreement and in consideration of the sum of — dollars now paid by the lender to the borrower, the latter hereby covenants to pay to the lender on the — day of — next the said sum of — dollars with interest thereon from

the date hereof, at the rate of — per cent. per annum, and if the said sum shall not be paid on that day then so long as any part thereof shall remain owing, to pay interest at the rate aforesaid on the moneys for the time being so remaining by equal half-yearly payments.

In further pursuance of the said agreement and for the consideration aforesaid the borrower hereby assigns to the lender all that debt or sum of — dollars due and owing to the borrower from the said — (debtor), as aforesaid, and all interest due and to become due thereon, and the full benefit thereof: To hold the same unto the lender absolutely, subject to the proviso for redemption hereinafter contained.

If the borrower shall pay the said sum with interest thereon in accordance with his foregoing covenant the lender at any time thereafter at the request of the borrower will reassign the mortgaged debt to the borrower.

It shall not be incumbent on the lender or any person claiming under him to take any action or proceedings for the recovery of the debt and money hereby mortgaged, nor shall the lender or other person claiming under him be answerable for any loss arising from his or their having neglected to take such proceedings to recover said debt.

It shall be lawful for the lender or other persons claiming under him to enter into any arrangement or accept any compromise in relation to the debt hereby assigned, without the concurrence of the borrower, and the same shall be binding on the borrower and the lender shall not be answerable for any loss occasioned thereby.

The borrower hereby covenants with the lender that the said debt or sum of — dollars is still due and owing to the borrower from the said — (debtor).

In witness, etc.

(Signature and seal of borrower.)

#### 5994. Mortgage of judgment debt.

Parties as in preceding form.

Whereas by a judgment dated the — day of —, in an action in the Superior Court of — in which the bor-



rower was plaintiff and — was defendant, it was adjudged that the plaintiff recover against the defendant the sum of — dollars and costs taxed, amounting to — dollars, and said judgment debt and costs with interest are still owing to the borrower.

And whereas the borrower requested — '(the lender)' to loan him the sum of — dollars, which he had agreed to do upon the security of the judgment above recited.

Now this indenture witnesseth, that in pursuance of said agreement and the sum of — dollars now loaned by the lender to the borrower, the latter covenants to pay to the lender on the — day of — next the said sum of — dollars, with interest thereon at the rate of — per cent. per annum, by equal half-yearly payments; and in further pursuance of said agreement the borrower hereby assigns the said judgment and the judgment debt and all moneys recoverable under it, to hold unto the lender, subject to the proviso for redemption in case the borrower shall pay to the lender the sum loaned with interest thereon in accordance with his covenant, in which case the lender will reassign the mortgaged judgment to the borrower.

It shall not be incumbent on the lender to issue execution or take any proceedings to enforce said judgment, nor shall the lender be answerable for any loss arising from his neglect to take such proceedings.

In witness, etc.

(Signature and seal of borrower.)

**5995. Indenture altering rate of interest and time of payment of mortgage debt by indorsement.**

This indenture, made this — day of —, between the within-named —, mortgagee, of the one part, and the within-named —, mortgagor, of the other part.

Whereas the principal sum of — dollars secured by the within-written mortgage still remains due and owing to the said mortgagee, but all interest accrued due thereon up to the date hereof has been fully paid.

Now this indenture witnesseth, that from the — day of

—, interest on said sum remaining due on said mortgage debt shall be payable henceforth at the rate of — per cent. per annum, instead of — per cent. per annum as provided by said mortgage deed, and shall be payable in equal half-yearly instalments, on the — day of — and the — day of — in every year, instead of the instalments on the dates mentioned in the said mortgage deed.

In witness, etc.

(Signatures and seals of both parties.)

## EXTENSION OF THE TIME OF PAYMENT OF A MORTGAGE.

### 5996. Massachusetts form for extension of mortgage.

This indenture, made the — day of —, 19—, by and between — of —, the holder of a certain promissory note for — dollars, given by —, and secured by a mortgage of certain real estate in —, dated the — day of —, 19—, and recorded in — registry of deeds, lib. —, fol. —, first party; and — of —, claiming to own the equity of redemption in said mortgaged premises, second party:

Witnesseth, that the said parties, for themselves and their representatives, hereby mutually agree that the time for the payment of the principal of said note and mortgage debt shall be and the same is hereby extended for the term of — years from the — day of —, 19—, and that the same is to bear interest from said date at the rate of — per cent. per annum, payable on the — day of — and the — day of — in every year, until said principal sum shall be fully paid.

And the said second party hereby covenants and agrees that he will not require the holders of said note and mortgage to receive payment of said mortgage debt during said extended term; that until the same is fully paid he will punctually pay the interest now due, and to grow due thereon, at the times and at the rate aforesaid; that he will keep the mortgaged premises in good repair and insured against fire, and the taxes thereon duly paid, according to the provisions of said mortgage; that he will punctually pay, without making claim to any reimburse-

ment whatever therefor, all taxes and assessments to whomsoever levied or assessed, whether on the mortgaged premises or on any interest therein, or on the debt secured by said mortgage, and whether in the nature of taxes and assessments now in being or not, and that at the expiration of said extended term he will pay the said mortgage debt, with all interest thereon, together with any moneys paid by the holders of said mortgage for taxes, insurance or other necessary charges, on or in respect of the mortgaged premises or the debt secured by said mortgage.

Nothing herein contained shall be construed to impair the security of said first party, his executors, administrators or assigns, under said mortgage, nor affect nor impair any rights or powers which he may have under the said note and mortgage for the recovery of the mortgage debt, with interest, in case of non-fulfilment of this agreement by said second party.

In witness whereof, etc.

1. See ante, vol. 5, §§ 4667, 4674.

#### 5997. New York form for extension of mortgage.

This agreement, made this — day of —, 19—, by and between —, of the first part, and —, of the second part, witnesseth:

Whereas, — executed and delivered to — a certain bond and indenture of mortgage, each dated the — day of —, 19—, to secure the payment of — dollars, and interest at the rate of — per cent. per annum, and recorded in the office of the — of the —, county of —, in lib. — of mortgages, page —, on the — day of —, 19—;

And whereas, the said first party, now the owner of the premises in said mortgage described, and the said second party, the owner and holder of said bond and mortgage, and said bond and mortgage by the terms thereof — become due and payable —;

Now this agreement witnesseth, that the said parties hereto, in consideration of the sum of one dollar to each by the other in hand paid, the receipt whereof is hereby acknowledged, do hereby mutually covenant, promise and agree to and with each

other, and their respective heirs, executors, administrators and assigns, as follows, viz.:

That the time for the payment of said principal sum be and the same is hereby extended to the — day of —, 19—, and that interest thereon shall be computed from and after — at the rate of — per cent. per annum, and be payable semiannually on the — days of — and — in each year, until the said principal sum be fully paid and satisfied.

And the said first party, in consideration of the sum of one dollar, and in consideration of the extension of the payment of the principal sum secured by said mortgage, for his heirs, executors and administrators, hereby covenants to and with the said second party, his legal representatives and assigns, that he will pay the said sum of — dollars, secured by said bond and mortgage, on the said — day of —, 19—, and the interest thereon at the time and in the manner provided for in this agreement, in the gold coin of the United States of America.

And the said first party further covenants and agrees for himself, heirs and assigns that he will, during all the time until the money secured by said bond and mortgage shall be fully paid and satisfied, pay all taxes, assessments and charges, ordinary and extraordinary, that may from time to time be laid, levied, assessed or imposed upon said mortgaged premises by any lawful authority, power or government.

In case said first party, his heirs or assigns shall make default in any of the covenants contained in said bond and mortgage, or shall fail or neglect to pay any tax, charge or assessment that may be imposed or laid upon such mortgaged premises, whilst said money or any part thereof remains unpaid, for a period of two months after the confirmation thereof, or in case the legislature of the state of New York, or any other government or power, shall enact any law imposing a special tax upon bonds or mortgages, or assessing bonds or mortgages separately from other personal property, or in case the said second party shall become liable to have any sum of money deducted from the principal or interest to become due on said bond or mortgage, or become liable in any way to pay any sum of money

whatsoever in consequence of any such or similar law, that thereupon the said principal sum of — dollars, with all arrearages of interest, shall, at the option of the said second party, his legal representatives or assigns, become and be due and payable immediately, although the time limited for the payment thereof may not then have expired, anything herein contained to the contrary notwithstanding. The failure or omission of said second party, or his legal representatives, to exercise such option in any one or more instances, shall not be construed as a waiver or relinquishment of the right to such option in any other case of default, but such option shall be and remain in full force and effect.

This agreement is executed by the second party on the representation of the first party that he is the absolute owner of the premises described in said mortgage, and fully authorized to execute these presents so as to bind said premises; and if said representations should be in any respect incorrect, it is expressly agreed that the said second party may, at his option, declare this agreement wholly void, and as if the same had not been made.

In witness whereof, etc.

Sealed and delivered in the presence of —.

**5998. Mortgage of share in partnership business, principal to be paid by monthly instalments.**

Indenture made the — day of —, 19—, between — of —, of the one part, the mortgagor; and — of —, of the other part, the mortgagee. Whereas the said mortgagor is a partner in the firm of —, carrying on the business of —, at —, in the county of —, under articles of partnership dated the — day of —, 19—; and whereas the said mortgagee has agreed to lend to the said mortgagor the sum of — dollars upon having the repayment of the same by monthly instalments, with interest for the same, or for so much thereof as shall for the time being remain unpaid, secured in manner hereinafter appearing:

Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of — dollars now paid to the said mortgagor by the said mortgagee (the receipt whereof the said mortgagor hereby acknowledges), the said

mortgagor hereby covenants with the said mortgagee to pay to him the sum of — dollars within the period of — calendar months from the date hereof, by equal monthly instalments, the first of such payments to be made on the — day of — next, and the last of such payments to be made on the — day of —, 19—. The said mortgagor hereby charges all that his share and interest in the said business, and in the good will thereof, and in the capital, book debts and assets thereof, with the repayment to the said mortgagee, his executors, administrators or assigns, of the moneys hereby secured at the times and in manner aforesaid; and the said mortgagor hereby covenants with the said mortgagee that he, the said mortgagor, will, so long as he shall continue a partner in the said firm and during the continuance of this security, duly observe and perform all the covenants, conditions and stipulations contained in the said articles, and on his part to be observed and performed; and that he will not do or suffer anything whereby the said partnership may be determined, or the said share or interest, or any of the premises hereby charged, may be encumbered or alienated, save in the ordinary course of business, or otherwise prejudicial in any way whatsoever; and that he will at all times devote his time and attention to the said business, and diligently and faithfully employ himself therein, and use his utmost endeavor to carry on the same to advantage; and will from time to time inform and keep informed the said mortgagee, his executors, administrators and assigns, if and whenever requested so to do, of the state and condition of the affairs of the said business, and of the liabilities, assets, profits and losses thereof; and the said mortgagor hereby irrevocably appoints the said mortgagee, his executors, administrators and assigns to be his lawful attorney and attorneys, in the name and on behalf of the said mortgagor, to give notice of dissolution of the said partnership, and to demand and take all accounts pursuant to the said articles of partnership, and to demand, sue for, recover, receive and give valid receipts for all moneys, effects and things to which the said mortgagor is entitled under the said articles of partnership, or otherwise in relation to the premises, and for the purposes aforesaid or any of them to

execute and do all such instruments and things as may be deemed necessary or expedient: provided always, that if the said mortgagor shall die, or if he or the said firm shall become bankrupt, or enter into any composition or scheme for the arrangement or liquidation, statutory or otherwise, of his or their affairs, for the benefit of his or their creditors generally, or if he shall fail to observe and perform any of the covenants herein contained and on his part to be observed and performed, and particularly if he shall at any time during the continuance of this security absent himself from the said business at any time for more than — days, except in case of illness, without the consent of the said mortgagee, his executors, administrators and assigns, then and in any such case the whole of the said sum of — dollars (principal and interest) shall immediately become due and payable.

In witness, etc.

**5999. Where principal debt has become due by default in payment of interest.**

Agreement made this — day of —, 19—, between — of —, mortgagor, of the one part, and — of —, mortgagee, of the other part. Whereas a mortgage dated the — day of —, 19—, and recorded with — county deeds, book —, page —, was made by said mortgagor to said mortgagee, to secure the payment of the sum of — dollars, with interest at the rate of — per cent. per annum, payable semiannually; and whereas default having been made by the said mortgagor in payment of the interest on the said sum on the days appointed for payment thereof, he, the said mortgagee, did demand payment of the said principal sum of — dollars, and all such interest as might be then due thereon, in accordance with the stipulation in said mortgage contained; and the said mortgagee has now consented and agreed to allow the said principal sum to remain until the expiration of the time mentioned in the said mortgage for the payment of the same, on condition that the said mortgagor shall pay the interest thereon by equal half-yearly payments as hereinafter mentioned:

Now the said mortgagor hereby agrees with the said mort-

gagee, his executors, administrators and assigns, that he, the said mortgagor, will pay the interest now due on said sum immediately, and will pay the interest to become due on the said principal sum in the manner following, that is to say: the sum of — dollars, being interest thereon for six months, on the — day of — and the — day of — in each and every year, until the maturity of said mortgage debt. Provided, nevertheless, that in default of the punctual payment of the said interest in the manner herein named and agreed to be paid, nothing herein contained shall waive or annul the provision in said mortgage whereby the whole mortgage debt becomes due upon any default in the payment of interest thereon, but the whole mortgage debt shall become immediately due, and the said mortgagee, his executors, administrators or assigns may proceed to sell the premises as provided by said mortgage (or as provided by law) for the payment of the whole mortgage debt and all interest due thereon.

Witness the hands of said parties.

**6000. Agreement by mortgagee to postpone sale under mortgage.**

Agreement made this — day of — between — of —, the mortgagee named in a certain mortgage given by — to him, dated the — day of —, 19—, and recorded in the — registry of deeds, book —, page —, first party; and — of —, the owner of the equity of redemption of said mortgaged premises, second party: Whereas, by virtue of a power of sale contained in said mortgage the mortgagee, after having given due notice of sale under the power, has now, at the request of the said owner of the equity of redemption, consented to postpone such sale for the period of — months, for the purpose of enabling said owner to obtain the money for paying off said mortgage, on his entering into the stipulations hereinafter contained:

Now these presents witness that, in consideration of the agreement on the part of the said owner hereinafter contained, said mortgagee hereby agrees with the said owner that he will not, for the space of — calendar months herefrom, sell, or proceed to offer for sale, under such power, said mortgaged prem-



ises, but will permit the owner to occupy and enjoy the same during such period of extension.

The said owner, in consideration of such forbearance, hereby agrees that in case of default of payment of the principal or interest of said mortgage at the expiration of such extended time of payment, he will not in any way hinder or attempt to prevent the sale of the said premises by the said mortgagee, under the power of sale contained in said mortgage. And the said owner agrees that upon request he will execute a good and sufficient conveyance of the mortgaged premises to the said mortgagee, his heirs or assigns, or to such person or persons as he or they may direct; and that he will make such conveyance without a previous sale under the power, if so requested, or, after such sale, will make such conveyance in confirmation thereof; and in the event of such sale under said power, or in the event of a conveyance in pursuance of this agreement, he will deliver up peaceable possession of the said premises to the purchaser at such sale, or to the grantee under such conveyance.

And the said owner further agrees that, during the period of extension hereby allowed, he will not do or suffer any act to be done which may injure the said premises, but will keep the same in all respects in good repair and condition.

In witness, etc.

#### DISCHARGE, SATISFACTION AND RELEASE OF A MORTGAGE.

##### 6001. Massachusetts form.

Know all men by these presents, that I, — of —, the mortgagee named in a certain mortgage given by — to me, dated the — day of —, 19—, and recorded with — deeds, lib. —, fol. —, do hereby acknowledge that I have received from —, the mortgagor named in said mortgage, full payment and satisfaction of the same; and in consideration thereof I do hereby cancel and discharge said mortgage, and release and quitclaim unto the said —, and his heirs and assigns, forever, the premises thereby conveyed.

In witness whereof I hereunto set my hand and seal this — day of —, 19—.

1. See also, **RELEASES**, post, 6199-6202.

**6002. Satisfaction of mortgage—New York form.**

I do hereby certify that a certain indenture of mortgage bearing date the — day of —, 19—, made and executed by — of —, to me, — of —, and recorded in the office of the clerk of the county of —, in book — of mortgages, page —, on the — day of —, 19—, at — o'clock — minutes A. M., is with the bond accompanying it fully paid and satisfied. And I do hereby consent that the same be discharged of record. Dated the — day of —, 19—.

**6003. Certificate of discharge in Utah.**

This certifies that a (mortgage or deed of trust, as the case may be) from A. B. to C. D., dated —, A. D. —, and recorded in book — of — on page —, is hereby canceled and discharged.

Signed in presence of

—,

Recorder — county.

Recorded —, A. D. 19—, at — M.

—, County Recorder.

1. Comp. Laws 1907, § 2004.

**6004. Reconveyance and discharge by indorsement on mortgage.**

Indenture made this — day of —, between —, the within-named mortgagee, and —, the within-named mortgagor, witnesseth, that in consideration of the payment of all moneys owing by the said mortgagor on the within-written mortgage, the said mortgagee hereby reconveys to the mortgagor the within-described mortgaged premises. To hold the same unto the said mortgagor, freed and discharged from all principal and interest thereby secured.

In witness, etc.

(Signature and seal of mortgagee.)

## OPTIONS.

**6010. General form for the sale of real estate.**

This agreement, made this — day of —, 19—, between — of —, hereinafter called the real estate company, and — of —, hereinafter called the seller, witnesseth:

In consideration of — dollars, the receipt of which is hereby acknowledged, said seller hereby agrees to convey by warranty deed to said real estate company or to any person, persons or corporation which said company may designate, at any time that it may demand on or before the — day of —, 19—, for the sum of — dollars to be paid according to the following terms (here insert terms), all that certain piece of real estate situated in township of —, county of —, state of —, more particularly described as follows: (here insert description).

Said seller hereby agrees to furnish said real estate company or any one whom it may designate an abstract showing a good, merchantable title on or before the — day of —, 19—, and to give said real estate company or any one by it designated, complete and peaceable possession of said premises on or before the — day of —, 19—.

In witness, etc.

1. See ante, vol. 1, § 175.

**6011. Option for sale of real estate—Another form.**

—, —, —, 19—.

For and in consideration of the sum of — dollars, the receipt whereof is hereby acknowledged, I hereby grant and give to — of the city of —, —, and his assigns, the sole and exclusive right and option for the period of — from this date, to purchase of and from me the following described real estate in — county, —, to wit: —, at and upon the following terms and conditions, to wit: —.

In the event that this option is exercised within said time, I obligate myself to furnish a full and complete abstract of title

to said real estate, exhibiting in me a good and indefeasible estate in fee simple, free and clear of encumbrance except — and to execute and deliver a general warranty deed in fee simple for said premises, contemporaneous with the payment of said purchase-price, subject only to the following encumbrance —.

This option to be effective must be exercised in writing indorsed hereon, and by a written notice addressed and mailed to me at the following address, — and in the event the same is so exercised, I agree to furnish said abstract and tender said deed within — days from the date said option is exercised.

\_\_\_\_\_  
\_\_\_\_\_

#### 6012. Option on stock.

This agreement, made this — day of —, 19—, between — of —, first party, and — of —, second party, witnesseth:

In consideration of — dollars, the receipt whereof is hereby acknowledged, the first party hereby agrees to sell — shares of the capital stock of the — corporation at — dollars per share at any time within — days from date.

All dividends or extra dividends declared during said time are to go with the stock; and — days' notice of acceptance will be given by said second party.

In witness, etc.

#### 6013. Short form for market use.

(Place and date.)

For value received, the bearer may call on the undersigned for — shares of the capital stock in the — company at — per cent., any time within — days from date.

All dividends declared during said time are to go with said stock.

(Signature.)

#### 6014. Option to buy partnership property and effects.

This agreement, made this — day of —, between — of —, first party, and — of —, second party, witnesseth:

Whereas, a partnership was formed on the —— day of ——, 19——, between said parties, which is about to be dissolved;

And, whereas, they have been unable to reach an agreement as to the terms of dissolution;

Now, therefore, in consideration of the premises, said second party hereby agrees to sell all his interest in said partnership and its effects to said first party, and not to sell the same to any one else.

It is expressly understood and agreed that a period of —— weeks from date shall be allowed for said parties to reach an agreement as to the terms of dissolution. If, at the expiration thereof, no agreement shall have been reached, said first party shall select an arbitrator, said second party shall select another arbitrator, and said arbitrators so chosen shall select a third; and said arbitrators shall agree upon the terms of dissolution and sale, and thereupon said second party shall convey all his interest in said partnership and its effects to said first party, in accordance with this agreement and the decision of said arbitrators.

In witness, etc.

1. See ARBITRATION, ante, 5190 et seq.

#### 6015. Agreement giving option to take lease.

Agreement made this —— day of —— between ——, the landlord, of the one part, and —— (intended lessee), the tenant, of the other part.

It is agreed that:

In consideration of —— dollars now paid by the tenant to the landlord, the tenant shall have the option of taking a lease of the premises belonging to the landlord, numbered —— on —— street in the city of ——, for a term of —— years at the yearly rent of —— dollars.

The said option shall be exercised by written notice to the landlord at any time within —— calendar months from the date hereof, and when so exercised the landlord shall grant and the tenant shall accept a lease of said premises for the said term at the said rent.

In the event of the option being exercised the lease shall be executed by the landlord and tenant respectively, whenever re-

quired by either party, and from the date of the exercise of such option until the execution of the lease, the parties shall be bound by the covenants to be contained therein, as if the same had been actually exercised.

In witness, etc.

(Signatures of both parties.)

1. See generally, LANDLORD AND TENANT, ante, 5785 et seq.

### 6016. Lease of realty with option to purchase.

Know all men by these presents that — of — county, state of —, ha— this day demised and leased to — of — county, state of —, the following described real estate in — county, state of —, to wit: —, at a monthly rental of not less than — dollars per month, payable on the — day of each month in advance, payable at —, —, —, beginning with the — day of —, 19—.

The conditions of this lease are:

1. That the lessee shall pay said rental promptly as it becomes due.
2. That lessee shall keep all taxes and all municipal assessments and instalments of assessments accruing and payable after this date paid as the same become due, except —.
3. That lessee shall keep the improvements on said real estate insured in some reliable insurance company designated by the lessor, for the benefit of lessor, in the sum of \$—, and keep the premiums upon the same paid as they become due, and to deliver policies of insurance to lessor.
4. That lessee shall use said premises well and keep the same in good condition and repair at all times, and lessor shall have the right at any time to enter upon and in said premises for the purpose of inspecting the same.
5. That lessee shall not assign this lease, nor sublet said premises or any part thereof without the written consent of lessor.

It is agreed between lessor and lessee herein, that for a violation of any of the terms and conditions herein by lessee, or upon lessee's failure to perform any of the terms and conditions herein specified, then and in either of said events and without previous notice or demand, this lease shall, at the option of the lessor, be forfeited, and lessee shall, upon such failure, forfeit and lose all right, title and interest in and to said lease and said real estate, and the right to use and occupy the same, and the right to exercise the option herein to purchase shall thereupon at the election of the lessor, be terminated and lost to lessee, and lessee's possession of said real estate from and after any such failure, shall be unlawful and without right, and such possession shall give lessee no right whatsoever, but he may be expelled at any time after such forfeiture of this lease.

It is further agreed between lessor and lessee, that for and in consideration of the sum of — dollars, this day paid to lessor by lessee, the receipt where-

of is hereby acknowledged, lessor hereby grants and gives to the lessee herein the right and option at any time while this lease is in effect to purchase said real estate of lessor at and for the sum and price of — dollars, together with interest thereon from this date at the rate of 6 per cent. per annum, payable semiannually, and if said option is exercised by lessee as herein provided, it is agreed that credit shall be given on said purchase price for the cash payment this day made for the consideration of this option, and lessee shall further have credit on said purchase price for a sum equal to the monthly rental payments herein stipulated and theretofore paid, together with interest thereon at the rate of — per cent. from the date of each rental payment, and the balance of said purchase price shall be payable in cash. In the event, however, that this lease is forfeited, or lessee's right and interest therein lost by h—— failure to comply with the terms and provisions hereof, or in event of said lessee's failure to exercise this option, having the right to do so, then said cash payment for this option shall be kept and retained by lessor as and for the consideration for this option and the right thereby given.

In the event said lessee shall exercise this option to purchase said real estate, and pay said purchase price, aforesaid, then lessor hereby binds h—self, h—— heirs, administrators and assigns to convey to lessee said above described real estate, by a general warranty deed in fee simple, subject to taxes, accruing after this date, and subject to all municipal assessments, which by the terms of this agreement the lessee is obligated to pay, and subject to all municipal assessments, the lien of which shall attach subsequent to this date. The covenants of warranty of said deed shall relate to and be limited to the condition of the title as it exists on the date hereof and to the acts of lessor thereafter.

In witness whereof, the parties have hereunto subscribed their names this — day of —, 19—.

Executed in duplicate.

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

1. See LANDLORD AND TENANT, 5785 et seq.

#### 6017. Lessee to lessor of desire to purchase premises under an option.

In pursuance of the power contained in an indenture of lease dated the — day of —, 19—, and made between yourself of the one part, and myself of the other part, I desire and agree to purchase the premises comprised in the said indenture at the sum of — dollars; and I request you, on or before the expiration of — days from the date hereof, to deliver to me a good and sufficient deed of conveyance of said premises in accordance with the provision in said indenture.

**6018. Lessee to lessor of his intention to purchase under option.**

In pursuance of the power given to me by a certain lease dated the — day of —, 19—, made by you to me, whereby certain buildings and premises situate at — were demised to me for the term of — years, I hereby notify you that I have elected to purchase the reversion of said premises for the price of — dollars, the sum stipulated to be paid therefor in said lease; which purchase-money I shall have ready for you on the — day of — next, on your making good title to the said premises, and executing to me a valid conveyance thereof in fee simple, free from all encumbrances.

**6019. Option to "call" for shares of stock.**

—————, 19—.

For value received the bearer may call on the undersigned on one day's notice, except last day, when notice is not required, — shares of the common stock of the — company, at — per cent., at any time in — days from date. All dividends, for which transfer books close during said time, go with the stock. Expires —, 19—, at —.

(Signed.) —————.

1. See *Treat v. White*, 181 U. S. 264, 45 L. ed. 853, 21 Sup. Ct. 611.

2. See ante, vol. 3, § 2310.

**6020. Option contract for purchasers of real property.**

Option contract, between — of —, party of the first part, and — and —, his wife, of — township, — county, parties of the second part, witnesseth:

That in consideration of — dollars (\$—) paid by party of the first part to parties of the second part, the receipt of which is hereby acknowledged, and in consideration of the agreements hereinafter set out, said second parties hereby sell to said first party, for the sum of — dollars (\$—), to be paid in cash upon the execution to said first party of a warranty deed therefor, the following real estate in — county, state of —, viz: (describing same).

Parties of the second part agree to furnish abstract showing a perfect title to said real estate, which title must be made satis-



factory to said first party's attorney, and second parties agree to convey said real estate to party of the first part by deed of general warranty. First party may demand the execution of said deed at any time within —, from the date hereof; and if second parties fail or refuse to execute the same or fail or refuse to perform the stipulations hereof on their part, then first party may by suit enforce the specific performance by second parties of this contract, and the execution of a deed for said real estate, or may, at his option, by suit, recover from said second parties, with interest and attorney's fees, and without relief, whatever damage he may have suffered by reason of any default on the part of said second party.

First party may refuse to purchase said real estate, and if he does so, shall forfeit and pay to second parties, with interest and attorney's fees, and without relief, the sum of — dollars (\$—), which shall constitute the only liability of first party for such refusal.

This contract to be void unless the first party offers performance thereof on his part within said period of —.

Deed to be made and delivered at the office of —, at —.

It is further agreed that the parties of the second part reserve the tenant's interest, being the one-half (—) of the — sown in the fall of —.

Possession to be given —, —.

Executed in duplicate this — day of —, —.

By —, (Seal.)  
 —, (Seal.)  
 —, (Seal.)

1. Mier v. Hadden, 148 Mich. 490.

#### 6021. Option to purchase stock.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

Whereas, said first party is the owner of — shares of the capital stock of the — company;

And whereas, said second party desires an option to purchase said shares of stock so owned by first party;

Now, therefore, in consideration of the sum of one dollar, the receipt whereof is hereby acknowledged, said first party hereby gives to second party the option, to be exercised by him on or before — days from date hereof, to purchase said shares of stock for the sum of — dollars, and the said first party hereby covenants and agrees immediately upon notice from second party to him at once to sell and deliver said shares of stock upon terms and conditions as follows: (here state terms and conditions).

Said first party further covenants and agrees not to sell or dispose of said stock during the said period of — days from the date hereof, and that immediately upon demand by said second party he will deliver said stock properly indorsed for transfer. As soon as said stock is delivered the cash is to be paid by said second party and the collateral notes to be executed by said second party as hereinbefore set forth.

This agreement shall be binding upon the heirs, executors, administrators and assigns of the respective parties hereto.

In witness whereof, etc.

#### **6022. Assignment of option.**

Dated —, 19—.

I hereby assign and transfer unto — all my right, title and interest in and to the within and foregoing option.

\_\_\_\_\_.

#### **6023. Election to exercise option.**

To \_\_\_\_\_:

I hereby elect to and do hereby exercise the option right to purchase the real estate described in the foregoing agreement, and acknowledge myself bound for the payment of the purchase price therefor, and further acknowledge myself bound by each and all the terms and provisions thereof.

\_\_\_\_\_.

Dated —, 19—.

## PARTNERSHIP.

### GENERAL CLAUSES.

#### 6025. Duration and style of partnership.

(1) The said — and — agree to become and remain partners in the business of —, from the — day of —, 19—, during the term of — years, under the style or firm name of —.

(2) The said —, —, —, and —, and the survivors of them, will become and remain partners in the business of —, from the — day of —, 19—, during the term of — years, if they or any two of them shall so long live, under the style or firm name of —, subject, nevertheless, to determination as hereinafter provided.

1. These clauses are to be inserted after Commencement Clauses, ante, 5125 et seq.

2. See ante, vol. 1, § 484.

#### 6026. Death of partner.

The death of any partner shall not dissolve the partnership between the remaining partners.

1. See ante, vol. 5, §§ 4951, 4955.

#### 6027. Retirement of partner.

Any partner may retire from the partnership on or at any time after the — day of —, 19—, on giving not less than — months previous written notice to the others of his intention so to do, and at the expiration of such notice the partnership shall determine so far as regards the partner giving or leaving such notice, but not as between the remaining partners.

1. See ante, vol. 5, § 4952.

#### 6028. Place of business.

The partnership business shall be carried on at —, or at such other place as the partners shall from time to time determine.

**6029. Payment to one partner for rent.**

The said — shall be allowed by the partnership the clear yearly sum of — dollars, as rent for the aforesaid real estate in — street, so long as the said business shall be carried on therein; but said real estate shall continue the sole property of the said —, subject only to be used for the purposes of the partnership business.

**6030. Capital.**

The capital of the partnership shall be — dollars, to be contributed by said partners in equal shares (or in the shares or proportions following, namely, etc.), or in such other shares as may from time to time be agreed upon in writing.

1. See ante, vol. 5, § 4890.

**6031. Increase of capital.**

If, at any time hereafter, further capital shall be required for carrying on the business, and a majority of the partners shall determine to increase the capital, the additional capital shall be advanced by the partners in equal shares (or in such proportions as they have respectively contributed to the original capital of the firm).

1. See ante, vol. 5, § 4890.

**6032. Additional capital contributed by one partner.**

If any partner shall, with the other partners' consent, bring in additional capital, or leave any part of his profits in the business, the same shall be considered a debt due to him from the partnership, and shall bear interest at the rate of — per cent. per annum, but the same shall not be drawn out except upon giving — calendar months written notice; and he shall be bound to draw out the same on a like notice given to him by the other partners, and at the expiration of such notice interest shall cease to be payable thereon.

1. See ante, vol. 5, § 4910.

**6033. Interest on capital.**

Each partner shall be credited in the partnership books with interest at the rate of — per cent. per annum on his share of

the capital for the time being standing to his credit, and such interest shall be paid to him on the —— day of ——, and the —— day of ——, in every year, before any division of profits is made, and such capital and interest shall be deemed to be a debt due from the partnership.

**6034. Stock in trade as part of capital.**

The stock in trade and plant belonging to the said —— shall be taken to be of the value of —— dollars, and shall become the partnership property at such valuation, and shall be credited to the said ——, on account of the capital to be contributed by him.

1. See ante, vol. 5, § 4890.

**6035. Patent to be property of partnership.**

The patent right shall be considered as part of the partnership property, and to have been brought into the business as capital by the said patentee; and no share or interest therein, or license to use the same, shall be sold, granted or assigned to any person or persons, without both partners' consent; and moneys, benefits and advantages to accrue from any such sale, grant, assignment or license shall be divisible between the partners in the same proportions as the profits of the business are hereinafter directed to be divided. The said patent right shall, for the purposes of the business, and of any accounts in relation thereto, be taken to be of the value of —— dollars at the date of these presents, and to become depreciated in value at the rate of —— dollars every half year.

1. See ante, vol. 5, § 4890.

**6036. Capital to be advanced by one of the partners.**

The said —— shall immediately bring into the business the sum of —— as capital, and shall continue to employ the same in the said business, and for the benefit of the partnership, during the partnership term, without any allowance of interest for the same, and shall, from time to time, at the request of the said ——, advance and bring into the said business such further sums of money (not exceeding the sum of —— dollars in any one year, nor exceeding, together with the said sum of —— dollars,

the total sum of —— dollars) as shall, in the opinion of the said ——, be required for carrying on the said business, being allowed interest on such further advances after the rate of —— per centum per annum out of the profits of the said business, before any division of such profits.

1. See ante, vol. 5, § 4890.

#### **6037. Deposit and payment of moneys.**

All moneys which shall from time to time be received for or on account of said partnership, not required for current expenses, shall be paid immediately to the bank for the time being dealt with by the partnership, in the same drafts, checks, bills or cash in which the same are received, and all disbursements for or on account of the partnership shall be made by check on such bank.

#### **6038. Expenses of business.**

All rent, expenses for repairs or improvements, all taxes, premiums of insurance, salaries and wages, and all other reasonable and necessary expenses, losses and damages which may be incurred in carrying on the partnership business (and the interest on the capital, payable to the respective partners), shall be paid out of the receipts and earnings of the said business, and in case of deficiency thereof, then by said partners in the shares or proportions in which they are entitled to the profits of the business.

#### **6039. Profits.**

The partners shall be entitled to the net profits of the business in equal shares (or in the shares following, that is to say, etc.), and the net profits shall be divided as soon after the end of each year as the general annual account shall have been taken, as hereinafter provided.

#### **6040. Losses.**

All losses happening in the course of the said business shall be borne in the same proportions, unless the same shall happen through the wilful neglect or default (and not the mistake or error) of either of the said partners, in which case the loss so incurred shall be made good by the partner through whose such neglect or default such losses shall arise.

**6041. Expenses, profits and losses to be divided equally.**

And also that they will at all times during the continuance of their partnership bear, pay and discharge equally between them all rents and other expenses that may be required for the prosecution and management of the said business; and that all gains, profits and increase that shall come or arise from or by any means of their said business shall be divided between them equally; and that all loss that shall happen to their said joint business by depreciation of commodities, bad debts or otherwise, shall be borne and paid between them equally.

**6042. Guaranty of profits to one partner.**

Provided always, that in case the share of said — in the said net profits shall in any year be less than — dollars, such share shall in every such year be made up to — dollars by the other partners, by contributions in the shares in which they are entitled to the net profits.

**6043. Drawings by partners.**

The said partners shall be at liberty to draw out of the said business, in anticipation of their expected profits, the following sums, namely: the said —, a sum not exceeding — dollars; the said —, a sum not exceeding — dollars; and the said —, a sum not exceeding — dollars in any quarter of a year; but in case in any year the amount so drawn out by any partner shall, on taking the general account, be found to be in excess of his share, then immediately after such account he shall refund the excess so drawn out.

**6044. Attention to business.**

Each partner shall devote the whole of his time and attention to the partnership business, and diligently and faithfully employ himself therein, and carry on the same to the greatest advantage of the partnership. (Provided, however, that the said — shall give only such an amount of supervision and attention to the said business as may be necessary for the efficient management thereof, and except to that extent shall not be bound to personal attendance or participation therein. Or, the said — shall not

be obliged to attend to the said business any further than he shall think proper).

**6045. One partner to be manager at salary.**

The said — shall be the manager of the said business, and shall be paid for his services as manager the annual sum of — dollars before any division of profits is made, and in addition thereto his share of the profits, by equal quarterly payments, the first salary payment to be made on the — day of —.

**6046. Not to engage in any other business.**

Neither partner shall, either alone or with any other person, either directly or indirectly, engage in any trade or business except upon the account and for the benefit of the partnership. (Provided, however, that the said — may continue the — business at — wherein he is now concerned or engaged.)

**6047. Checks, bills and notes.**

No partner shall, without the other partners' consent, draw, accept or sign any bill of exchange or promissory note, or contract any debt on account of the partnership, or employ any of the moneys or effects thereof, or in any manner pledge the credit thereof, except in the usual and regular course of business. (Any infraction of this provision shall be a ground for an immediate dissolution of the partnership as to the offending partner, and the other partners may forthwith declare the same dissolved by a written notice to the offending partner, or left for him at the office of the firm.)

1. See ante, vol. 5, § 4928.

**6048. Bankers and drawing checks.**

The bankers of the partnership shall be the — Banking Company, or such other bankers as the partners shall from time to time agree upon; and all partnership moneys (not required for current expenses) shall be paid into the firm's account at the said bank at the end of every week. Each partner shall be at liberty to draw on the partnership account, but only for part-



nership purposes or as mentioned in the next clause hereof, and only by drafts or checks upon such bankers in the firm name.

1. See ante, vol. 5, § 4928.

**6049. Bonds, notes and other securities to be signed by both partners.**

Whenever there shall be occasion to give any bond, note, bill or other security for the payment of any money on account of the partnership, the same shall be respectively signed and executed by all the (acting) partners, unless in the course of business the use of the partnership name by one partner shall be unavoidable.

1. See ante, vol. 5, § 4928.

**6050. Not to give credit when forbidden.**

No partner shall lend any money, or give credit to, or have dealings on behalf of the partnership with, any person, partnership or corporation whom the other partners or partner shall have forbidden him to trust or deal with; and if he shall act contrary to this provision, he shall repay to the partnership any loss which may have been incurred thereby.

**6051. To make no contract exceeding certain amount.**

Neither partner, without the others' previous written consent, shall buy or sell or enter into any contract for the purchase or sale of any goods or other articles amounting to the value of — dollars or more.

**6052. Hiring clerks.**

No partner shall hire or dismiss, except in case of gross misconduct, any clerk or other person in the employment of the partnership, without the other partners' consent.

1. See ante, vol. 5 § 4930.

**6053. Not to indorse or become surety for another.**

No partner shall, without the others' previous written consent, enter into any bond, or become bail, surety or security, for any person.

1. See ante, vol. 5, § 4928.

**6054. Not to do any act whereby partnership property shall be attached.**

No partner shall do, or willingly suffer to be done, anything whereby, or by means whereof, the stock in trade, capital or property of the partnership may be attached or taken on execution.

**6055. To give information.**

Each partner shall, upon every reasonable request, give to the others a true account of all transactions relating to the firm's business, and full information of all letters, accounts, writings and other things which shall come into his hands or to his knowledge concerning its business.

**6056. Trade secrets.**

Neither partner shall, during the continuance of the partnership, nor for — years after its determination by any means, without the others' written consent, or of his executors or administrators, divulge to any person not a member of the firm any trade secret, method of manufacture or special information, employed in or conducive to the partnership business, and which may come to his knowledge in the course of, or by reason of, this partnership.

**6057. To pay his private debts.**

Each partner shall promptly pay his own debts, and keep indemnified the other partners, and the stock in trade, capital and property of the partnership, against the same, and all expenses on account thereof.

**6058. Advances to firm.**

Either partner may from time to time, with the other's consent, advance any sums of money to the firm by way of loan, and every such advance shall bear interest at the rate of — per cent. per annum, from the time of making the advance until repayment thereof, and may be withdrawn at any time at — months' notice.

1. See ante, vol. 5, § 4910.

**6059. Not to compound debts.**

No partner shall, without the other's consent, compound, release or discharge any debt which shall be due or owing to the partnership, without receiving the full amount thereof.

**6060. Survivorship as between partners.**

Between the partners, there shall be no benefit of survivorship, and the executors and administrators of each partner who shall die shall become entitled to his share as part of his personal estate.

1. See ante, vol. 5, § 4955.

**6061. Books of account.**

Proper books of account shall be kept by the said partners, and entries made therein of all such matters, transactions and things as are usually entered in books of account kept by persons engaged in the same or similar business. Such books, and all partnership letters, papers and documents shall be kept at the firm's counting-house or office, and each partner shall at all times have free access to examine, copy and take extracts from the same.

**6062. Annual account.**

On the — day of —, 19—, and on the same day in each subsequent year, a general account shall be taken of the assets and liabilities, and of all dealings and transactions of said firm during the then preceding year, and of all matters and things usually comprehended in accounts of a like nature; and in taking such account a just valuation shall be made of all items requiring valuation. Such account shall be entered in a book, which shall be signed by all the partners, and when so signed shall be binding on them, save that, if any manifest error therein shall be found and signified by any partner to the others within — calendar months thereafter, the same shall be rectified. (The profits arising from the business as determined by such account shall be carried to the credit of the partners in the proportions hereinbefore specified on the firm's books immediately after every annual account shall have been taken and signed, and may be drawn out at pleasure.)

**6063. Provision for admission of sons.**

That either of said partners may at any time nominate a son, being of the age of twenty-one years, to succeed to his share in the partnership and the capital and future profits thereof; and upon signing a proper deed or deeds respecting the admission of a new partner, every such son shall be and become a partner in the partnership concern in the place, and in respect of the share and interest, of his father therein, and be entitled thereto upon the same terms and conditions, and under and subject to the same advantages, regulations and agreements, in all respects and in the same manner, as the father would have been entitled to if he had remained a partner in respect thereof, or as near thereto as the difference of circumstances will permit.

**6064. Decision of majority binding.**

In all cases relating to the management of the partnership business, the decision of a majority in value of the acting partners shall be conclusive upon and bind all the partners.

**6065. Allowance for good will.**

On the death or retirement of any partner no allowance (or an allowance) shall be made to him or his representatives in respect of the value of the good will of the said business.

**6066. Retiring partner not to carry on business.**

In the event of any of the said partners retiring as aforesaid, he shall not, during the remainder of the term of the said partnership, carry on or engage or be interested, directly or indirectly, in any other business competing or interfering with the business of the said firm.

**6067. Partner not to assign his share.**

No partner shall, without the other's previous written consent, assign his share or interest in the partnership.

**6068. Partners may assign shares.**

It shall be lawful for any partner, or his executors or administrators, to assign all or any of his share or interest in the part-

nership concern, subject to the provisions as to pre-emption herein contained.

**6069. Partner may sell his share, giving others right of purchase.**

Any partner who shall desire to sell his share and interest in the business shall be at liberty to do so, and shall in such case first offer such share and interest to the other partners or partner for the time being at a price to be named by the selling partner, and if the other partners or partner shall not within one calendar month accept such offer, then the selling partner shall be at liberty to sell his share and interest to any other person or persons at the same or a higher price, but shall not sell the same to any other person at a less price, unless and until it shall have been offered to the other partners or partner for the time being at such less price, and such last-mentioned offer shall not have been accepted within one calendar month.

**6070. Option to surviving partners to retain share of deceased partner in business.**

In case any partner shall die before the expiration of the partnership, the surviving partners or partner shall have the option of retaining his share in the firm capital in the said business during the residue of the term of the partnership, such option to be signified to the representatives of the deceased partner within a reasonable time; and in case the surviving partners or partner shall elect so to do, the said business shall be carried on during the residue of the said term, as nearly as may be, according to the provisions hereof, but so that the representatives of the deceased partner shall succeed to his share in the business, and be substituted for him as silent partners only: provided, that in case the surviving partners or partner shall continue the business by virtue of such option as aforesaid, all proper instruments for carrying the provisions of this clause into effect shall be executed and made between them or him and the representatives of the deceased partner: provided also, that if the net profits of the business which shall be coming to the representatives of such deceased partner shall in any year be less than — per cent. on the amount of the capital of such deceased partner

retained in the said business, it shall be lawful for such representatives to retire from the partnership on giving not less than — months' notice to the other partners or partner of their intention so to do, or leaving such notice at the firm counting-house or office; and at the expiration of such notice the partnership shall determine as to them, and they shall be entitled to receive the share of capital of such deceased partner, with all interest and profits becoming due thereon up to the expiration of such notice, on the same or the like footing as if the deceased partner had then died, and such option of retaining his capital as aforesaid had not been exercised.

**6071. Power to dissolve in case of losses.**

If at any time, owing to losses from any cause whatever, one-fourth of the entire capital of the partnership shall be sunk, or reasonable apprehensions shall be entertained that further capital, to the extent of — dollars, will be required in order to carry on the firm business, a majority in value of the partners may require the partnership to be dissolved and wound up, as if the same had expired by lapse of time.

1. See ante, vol. 5, § 4952.

**6072. Provision for dissolution in case of death or bankruptcy of partner.**

If any partner shall die, or shall be adjudicated bankrupt or insolvent, or take proceedings for liquidation by arrangement or composition with his creditors, the partnership shall thereupon determine as to him, and he or his executors, administrators or assigns, as the case may be, shall have no interest in common with the surviving or other partners or partner in the firm property, but shall be considered in equity as a vendor or vendors to the surviving or other partners or partner of the shares in the partnership of the deceased, or bankrupt, or liquidating, or compounding partner, as from the day of his death, or bankruptcy or insolvency, or of his having taken such proceeding for liquidation as aforesaid, or of his having compounded as aforesaid, at the amount standing to his credit at the last preceding annual account, together with interest thereon at the rate of — per cent. per

annum, in lieu of profits, from such annual account, or in case of bankruptcy or insolvency, at the option of the assignee, at an amount to be ascertained by arbitration, under the provision hereinafter contained; but less any sums withdrawn by him in the meantime in diminution of his share of capital or profits; and the balance, with such — per cent. added, or the amount ascertained by arbitration, as the case may be, shall be considered a debt owing from the partnership to the deceased, bankrupt, liquidating or compounding partner, or his executors, administrators or assignee, and shall be paid by three equal instalments at —, — and — calendar months, with interest thereon at the rate of — per cent. per annum; and all necessary deeds and assurances shall be executed for vesting the share of such partner in the surviving or other partners.

1. See ante, vol. 5, § 4952.

#### **6073. Power of expulsion.**

If either partner shall infringe any of the clauses herein contained, or become insane, or enter into any arrangement or composition for the benefit of his creditors, or shall (without the consent of the other partner) make any assignment either absolutely or by way of mortgage, or declaration of trust of all or any of his share and interest in the partnership, the other partner may forthwith determine the partnership by written notice, left at the place of business, and may henceforth continue the business alone, and may advertise notice of the dissolution in the — (newspaper), and, if necessary, sign the infringing partner's name to such notice of dissolution.

1. See ante, vol. 5, § 4952.

#### **6074. Power to determine partnership by notice.**

If at any time after the — day of —, 19—, any partner shall desire to retire from the partnership, he shall be at liberty to give to the other partners or partner, or to leave for them or him at the place where the business shall for the time being be carried on, written notice thereof, and of his intention to determine the partnership so far as he is concerned; and the partnership shall, at the expiration of — months after the giving or

leaving of such notice, determine accordingly as regards the partner giving such notice.

1. See ante, vol. 5, § 4952.

**6075. Provision for sale of interest of deceased partner.**

If any partner shall die during the partnership, then and in such case his executors or administrators, or any person or persons to whom he may by will bequeath the same, shall be entitled to his share in the firm capital, stock, property and effects and may either continue a partner or partners in the business in respect and to the extent of his share and interest of such deceased partner, or may sell the same in the manner hereinbefore provided with respect to a sale by any living partner of his share and interest.

1. This is usually regulated to a great extent by statute.

**6076. Upon dissolution dormant partner to receive his full share of capital.**

That upon the dissolution of the said partnership by lapse of time, the death of either of the said partners, or by such notice to be given by the said (dormant partner), as aforesaid, the said (dormant partner), his executors or administrators shall in the first place receive out of the said partnership joint stock and effects the full sum of — dollars, being the full amount of the capital contributed by him, in satisfaction of his share thereof, without any deduction or abatement on account of any losses or other expenses which may have been incurred in the carrying on of the said business; which said sum of — dollars shall be paid to the said (dormant partner), his executors or administrators, by the bond of the said (acting partners), by four equal instalments, at three, six, nine and twelve calendar months, to be computed from the time of the dissolution of the said partnership, together with interest for the same at the rate of — per cent. per annum, to be computed from the time of such dissolution. In case the said partnership stock and effects shall prove insufficient to pay unto the said (dormant partner), his executors or administrators the said sum of — dollars, then and in such case the same shall be made



good by the said (acting partners), their executors or administrators, out of his or their own separate estate.

1. See BONDS, 5505-5507, 5510.

**6077. Good will not to be sold on dissolution.**

On the dissolution of said partnership the good will of the business shall not be sold, but each partner shall be at liberty to commence and carry on a similar business in his own or other name not identical with the firm name and to send circulars to the firm customers announcing the facts of the dissolution and commencement of business by former partner.

**6078. Good will to be sold on dissolution.**

On the dissolution of said partnership, if the said business is sold as a going concern, the good will shall be treated as a partnership asset, and no partner (unless he shall be the purchaser of such business) shall, for — years from the completion of such sale, directly or indirectly carry on or be concerned or interested in the business of — as principal, agent, manager, traveler or servant within — miles from the place of business of said partnership.

**6079. Purchase of share in partnership including good will.**

In the event of the death or retirement of any partner and the purchase of his share by another partner the good will of the business shall be regarded as part of the partnership assets, and the value thereof shall be deemed to be — times the average annual profits of the partnership for the then last preceding — years or from the commencement of the partnership, whichever be the shorter. A retiring partner whose share is purchased shall not, for — years after such purchase, directly or indirectly carry on or be concerned or interested in the same business as principal, agent, manager, traveler or servant within — miles from the place of business of said partnership.

**6080. Vacations.**

Each partner shall be entitled to — weeks' vacation in each year. In the first year of the partnership the said — shall have

the first choice of the time at which he shall take his vacation and in all succeeding years the choice shall be made by the partners alternately.

**6081. Provision for payment of deceased partner's share to representatives.**

In the event of the death of any partner, an account and statement shall be taken and made out of his share of the capital and effects of the partnership, and of all unpaid interest and profits belonging to him up to the time of his decease, for which purpose a valuation shall be made of any assets or effects requiring valuation, and the amount so ascertained to be due and owing to the deceased partner shall be paid by the surviving partners to his representatives within —— calendar months from his decease, with interest thereon from his decease until payment at the rate of —— per cent. per annum; and on such payment the share of the deceased partner in the partnership property and effects shall go and belong to the surviving partners in the proportions in which they shall have contributed to the purchase thereof.

1. This is generally regulated by statute.

**6082. Option to representatives of deceased partner to continue in partnership.**

If any partner shall die before the expiration of the partnership, his representatives shall have the option, to be declared by notice in writing given to the surviving partners or partner, or left at the firm counting-house or office, within —— calendar months after his death, of succeeding to his share in the said business as from his death as silent partners; and if such option shall be exercised, the said business shall be carried on during the residue of the said term as from the death of such deceased partner as nearly as may be according to the provisions hereof, so that the deceased partner's representatives shall succeed to his share in the said business, and be substituted for him as silent partners only: provided also, that in case the representatives of a deceased partner shall elect to become silent partners, by virtue of such option as aforesaid, all proper instruments for carrying

the provisions of this present clause into effect shall be executed and made between them and the surviving partners or partner.

**6083. Winding up on dissolution.**

Upon the dissolution of the partnership a full and general account of the firm assets, liabilities and transactions shall be taken, and the assets and property thereof shall, as soon as practicable, be sold, the debts due the partnership collected, the proceeds applied, first, in discharge of the firm liabilities and the expenses of liquidating the same; and next, in payment to each partner or his representatives of any unpaid interest or profits belonging to him, and of his share of the capital; and the surplus, if any, shall be divided between the partners or their representatives in the shares in which they contributed the firm capital; and the partners or their representatives shall execute all such instruments for facilitating the collection and division of the partnership property and for their mutual indemnity and release, as may be requisite or proper.

1. See ante, vol. 5, ch. 152.

**6084. Amount and division of property upon dissolution.**

That at the end of their partnership the said partners will make each to the other full and correct accounts of all things relating to their said business, and will in all things truly adjust the same; and that all the stock and effects, and the gains and increase thereof, which shall then appear to be remaining either in money, goods, wares, fixtures, debts or otherwise, shall be divided between them in the same shares and proportion that they have contributed the firm capital.

**6085. Final general account and valuation to be taken and debts got in.**

Within ——— days after the dissolution of the partnership, a full and general account and balance-sheet shall be taken and made of the firm property, assets and liabilities; and a full and particular inventory and valuation of all the firm machinery, plant, tools, utensils, stock-in-trade, materials and effects shall be made by ——— of ———, or such other person or persons as the

parties hereto agree upon for that purpose; and all debts owing to the firm shall be collected and got in by —— of ——, or such other person or persons as the parties hereto shall jointly appoint for that purpose.

**6086. Provision for division of partnership property by agent or trustee.**

In case any disagreement shall arise as to the division of the said credits, moneys, property and effects, then the outstanding credits shall be collected by some person to be mutually appointed by the said partners, who, after deducting thereout an allowance for his trouble, and all incidental expenses incurred in such collection as aforesaid, shall pay over the same to the said partners in the proportions in which they are so respectively entitled thereto as aforesaid, and shall sell the remainder of the said partnership property and effects, and divide the moneys arising therefrom between the said partners in the same proportions.

**6087. Provision that on dissolution one partner may purchase.**

In case either partner shall, upon the determination of the said partnership, desire to purchase the other partner's share in the said partnership effects, the said partner may do so on giving to the other partner, his executors or administrators, written notice of such desire, within one calendar month next after the dissolution of such partnership. And in case the said partners shall happen to differ as to the price to be given for the share of the other partner in the said partnership effects so to be purchased, then the value thereof shall be ascertained by two disinterested persons, one to be chosen by each partner, and these referees, previously to their entering upon the reference, shall choose an umpire between them, whose decision, in case such referees do not agree, shall be binding and conclusive on all parties; and in case either of the said parties shall refuse to name a referee within seven days after request, then the referee named by the other party may proceed alone, and his award shall be binding and conclusive on all parties; and the partner desiring to purchase shall thereupon pay unto the other partner, his executors or administrators, such sum of money for the purchase of

the said business as the said referees, or their umpire, shall determine to be the value thereof. In case both partners desire to purchase at such valuation, the right to do so shall be awarded to the partner who shall bid the highest sum above such valuation for the privilege of purchasing.

**6088. Purchase of interest of retiring partner in case partnership is dissolved upon notice.**

In case the said partnership shall be dissolved in pursuance of any notice, to be given or delivered as aforesaid, the party to whom such notice shall have been so given or delivered shall be at liberty to purchase the interest of the retiring partner, and shall pay him the value of his share in the said partnership effects; and the amount of such share shall be ascertained by two persons, one to be chosen by the partner who shall give such notice, and the other by the continuing partner, who, previously to their entering into the reference, shall choose, etc. (Continue as in last clause.)

**6089. Covenant in deed of dissolution by retiring partner that he has not contracted debts and will not collect or release debts due firm.**

And the said ——— hereby covenants with the said ——— in manner following (that is to say), that he, the said ———, has not at any time heretofore contracted any debt or obligation which can or may charge or affect the said ———, his executors or administrators, or any part of the firm's assets nor effects; nor received nor discharged any of the firm's credits, except as appears by the firm books; nor done any act whereby any part of the share and premises hereby assigned, may be charged or encumbered in any manner howsoever; and that he, the said ———, his executors or administrators, will at all times hereafter, on the request and at the costs of the said ———, his executors, administrators or assigns, make, do and execute every such further assurance, act or thing whatsoever for the more effectually vesting in the said ———, his executors, administrators or assigns the premises hereby assigned, and every part thereof, and enabling him and them to receive the same, as shall be reasonably required; and that he, the

said —, his executors or administrators, will not at any time hereafter receive, compound or discharge any of the goods, credits or effects, one moiety whereof is intended to be hereby assigned, and will not release, disavow or become nonsuit in any action or proceeding which may be brought by the said —, his executors or administrators, by virtue of the said power, or do any other act or thing in derogation of the assignment hereby made, or the powers or authorities hereby given.

**6090. Covenants by continuing partner to pay debts and for indemnity.**

And the said — hereby covenants with the said — that he, the said —, his heirs, executors or administrators will, within — calendar months from the date hereof, pay and discharge all said firm's debts and liabilities; and will at all times hereafter effectually keep indemnified the said —, his heirs, executors and administrators, and his and their estate and effects, against all actions, proceedings, costs, damages, expenses, claims and demands in respect thereof, and also against all costs, damages and expenses by reason of any action or proceeding which may be brought or instituted by the said —, his executors or administrators, in the name or names of the said —, his executors or administrators, by virtue of the power or authority hereinbefore contained, or any act, matter or thing in relation thereto.

**6091. Provision for amending partnership articles.**

If at any time during the continuance hereof the said parties shall deem it necessary or expedient to make any alteration in any article, clause, matter or thing herein contained, for the more advantageous or satisfactory management of the said partnership business, it shall be lawful for them so to do by any writing under their joint hands indorsed on these articles, or entered in any of the partnership books; and all such alterations shall be adhered to and have the same effect as if the same had been originally embodied in and formed a part of these presents.

1. See ante, vol. 1, § 484.

## NOTICES.

**6092. Partner to other partners to dissolve partnership.**

In pursuance of the power contained in an indenture dated —, 19—, and made between (describe parties), I hereby give you notice that I intend to determine the partnership now subsisting between us on the — day of —, 19—.

1. See ante, vol. 5, § 4952.

**6093. One partner to his copartners of intention to retire from partnership.**

Gentlemen,—Being desirous wholly to determine our present partnership, so far as relates to myself, on the — day of — next, and to retire from the same on that day, I hereby, pursuant to the power enabling me so to do contained in our deed or articles of partnership, dated the — day of —, 19—, give you written notice thereof; and I declare that our partnership shall, so far as relates to myself, be hereby wholly determined on the said — day of —, and that I shall retire from the same on that day.

To Messrs. —.

1. See ante, vol. 5, § 4952.

**6094. Partner to other partners of desire to sell his share.**

In pursuance of the power contained in an indenture dated —, 19—, and made between (describe parties), I hereby give you notice that I desire to dispose of my entire share and interest in the partnership now subsisting between us at such price as may be mutually agreed upon, or as, in case of difference, shall be ascertained by arbitration.

**6095. Of dissolution of partnership.**

Notice is hereby given that the partnership lately subsisting between the undersigned — and —, carrying on business as —, at —, under the style or firm of — & Co., was on —, 19—, dissolved by mutual consent, and that the business in future will be carried on by the said — alone (who will pay and discharge all debts and liabilities, and receive all moneys payable to the said late firm).

1. See ante, vol. 5, § 4954.

**6096. Of dissolution of partnership as regards one partner only.**

Notice is hereby given that the partnership lately subsisting between the undersigned —, — and —, carrying on business under the firm name of —, at —, as —, was on the —, 19—, dissolved by mutual consent, so far as regards the said —, who retires from the firm.

1. See ante, vol. 5, § 4954.

**6097. Intention to expel partner.**

I do hereby give you notice that it is my intention immediately to dissolve the partnership now subsisting between us, in pursuance of a power to that effect contained in our partnership deed, on account of your having, contrary to the stipulations and agreements therein contained, neglected to keep proper and just accounts; and also of having, without my consent, appropriated moneys and effects of the partnership to your own separate use; and of having committed other acts contrary to the said stipulation and agreements, whereby I am authorized, by giving you written notice to that effect, to expel you from the partnership, and I do therefore expel you from the partnership accordingly; and I do declare that the said partnership between us is this day dissolved, and that the business thereof shall from henceforth be carried on in my own name only, but without prejudice, nevertheless, to any remedies which either of us may be entitled to as against the other for the breach of all, any, or either of the covenants or agreements contained in our said partnership articles previously to the dissolution.

1. See ante, vol. 5, § 4954.

**6098. To dissolve partnership under provision for that purpose.**

I do hereby give you notice that it is my intention to dissolve the partnership now subsisting between us on the — day of — next (being at the expiration of — calendar months from the day of the date hereof), in pursuance of a power to that effect contained in our deed of partnership.

1. See ante, vol. 5, § 4952.

**6099. Intention to purchase share in partnership on dissolution thereof.**

I do hereby give you notice that it is my intention to purchase



your share in the partnership which subsisted between us under a deed of partnership dated the — day of —, 19—, for a term of — years from thenceforth next ensuing, and which said term expired on the — day of — last, in pursuance of the powers, and upon the terms and conditions contained in the above-mentioned deed of partnership.

**6100. Partners, after dissolution of partnership, to debtor of firm to pay debt to joint agent of partners.**

We hereby give you notice that the partnership lately subsisting between us, under the firm of — & Co., was dissolved on the — day of — last, and we request you to pay the debt owing by you to us to Mr. —, who is duly authorized to receive the same, and whose receipt shall be your sufficient discharge.

As witness our hands, this — day of —, 19—. To Messrs. — (debtors).

1. See ante, vol. 5, § 4954.

## PRECEDENTS.

**6101. Partnership agreement between merchants with usual provisions.**

This indenture, made this — day of —, 19—, between — of —, of the one part, and — of —, of the other part, witnesseth as follows:

The said — and — will become and remain partners in the business of — for the term of — years from the date hereof, if both of them shall so long live.

That the business shall be carried on at No. — in — street, in — aforesaid, on which premises the same is now being carried on by the said —, or at any other place they may hereafter mutually agree to rent for that purpose;

That proper books of account shall be kept in the counting-house on the said premises; and therein shall be duly entered, from time to time, all dealings, transactions, matters and things whatsoever in or relating to the said business; and each party shall have full and free access thereto at all times, but shall not remove the same from such depository;

That the capital requisite to carry on the said business shall

be advanced by the said partners in equal moieties, and the said capital, and all such stock, implements and utensils in trade, purchased out of the partnership funds, as well as the gains and profits of the said business, shall belong to the said parties in equal moieties;

That each party shall be at full liberty to draw — dollars monthly for his own private use, on account, but not in excess of his presumptive share of the profits, so long as the said business shall be found profitable, and the capital advanced as aforesaid shall remain undiminished;

That neither party shall become bail or surety for any other person; nor lend, spend, give or make away with any part of the partnership property; or draw or accept any bill, note or other security in the name of the said firm, except in the due course of the said partnership business;

That an account of the stock, implements and utensils belonging to the said business, and of the book-debts and capital, shall be taken, and a statement of the firm affairs be made yearly, to be computed from the date hereof, when the sums drawn by each party during the preceding year shall be charged to his share of the firm profits; but if, at the end of any one year of the said partnership, it shall be found to be unprofitable, the said partnership shall thereupon be dissolved, unless it shall be occasioned by some unavoidable loss or accidental circumstance;

That each party shall sign duplicate copies of each of such statements of affairs, and shall retain one of them for his own use; and another copy thereof shall be written in one of the partnership books, and likewise be signed by each of them; such accounts shall not again be opened, unless some manifest error shall be discovered in either of them, within — months thereafter, and then so far only as respects the correcting of such error; and every such statement of affairs shall, in all other respects, be conclusive evidence between, and binding on, said parties;

That at the expiration or termination (by death or otherwise) of the said partnership, a valuation and similar account of the firm stock, effects and capital, and good will, if any, shall like-

wise be taken, stated, copied and signed and become equally conclusive; and the balance of such account then found to exist shall belong to the said parties in equal moieties, and be realized and divided accordingly, and thereupon they shall execute mutual releases;

That all disputes and differences, if any, which shall arise between the said parties shall be referred to, and decided by, two indifferent, competent persons in or well acquainted with the — trade, one to be chosen by either party, or by an umpire to be chosen by the referees in the usual course in such or similar cases; and their or his decision shall, in all respects, be final and conclusive on both the said parties, and shall be given, in writing, within — days next after such submission, or within such further time, not exceeding — days, as they or he shall require;

That either party may determine the partnership hereby created on breach of this agreement by the other of them, on giving unto the other of them — calendar months' notice thereof in writing.

1. See ante, vol. 1, § 484.

#### 6102. Extension of term of partnership indorsed on articles.

Indenture made the — day of —, between — of —, of the first part; — of —, of the second part; and — of —, of the third part. Whereas the partnership entered into by the above-named parties under the within-written indenture will expire by limitation on the — day of — next; and whereas the said parties thereto have agreed to continue the said partnership for the further term of — years from the said — day of —, in manner hereinafter expressed:

Now this indenture witnesseth, that each of them, the said —, — and —, hereby covenants with the others of them, and their executors and administrators, jointly and severally, in manner following, that is to say, that they, the said —, — and —, and the survivors of them, will remain and continue partners together in the within-mentioned trade or business for the further term of — years, to be computed from the said — day of — next, upon the same terms and conditions, and

subject to the same provisions and agreements, as are in and by the within-written indenture expressed and contained in relation to the partnership thereby constituted, and so that all such terms, conditions, provisions and agreements shall remain in force and take effect in like manner as if the said partnership had been originally entered into for the full term of — years, instead of the said term of — years.

In witness, etc.

### 6103. Agreement to form law firm.

This agreement, made this — day of —, 19—, between — of —, — of — and — of —, witnesseth:

In consideration of mutual interests and profits to be derived therefrom, the undersigned attorneys hereby form a partnership under the name of —, to continue for — years from date; but any party may retire on one month's notice in writing.

All receipts by way of counsel fees or other business matters shall be divided after current expenses have been paid and deducted, whenever the same shall have been received, in the following proportions, to wit: Mr. — shall receive —, Mr. — shall receive — and Mr. — shall receive —.

Each of said parties shall devote his whole time and attention to the business of said law firm, and shall not engage in any other business whatsoever, either on his own account or as agent, alone or in partnership with any other person or persons whatsoever.

Neither member of the firm shall become indorser or security in any manner for any other person without the consent of all the other members of the firm.

In witness whereof, etc.

1. See ante, vol. 1, § 484.

### 6104. New articles for continuation of partnership.

This agreement, made this — day of —, 19—, between — of —, — of — and — of —, all of the city of —, witnesseth:

Whereas said parties have for — years last past been engaged in the business of —, in the city of —, under the

firm name and style of — and Company, and are desirous to continue said business under new articles of partnership.

Now, therefore, the said parties for, and in consideration of the premises, and of the mutual covenants herein contained and of the sum of \$1 to each in hand paid by the other, the receipt whereof is hereby acknowledged, do hereby covenant and agree as follows:

Said business shall be carried on in all particulars as heretofore, and shall be conducted under the firm name and style of — and Company. The main office and place of business of said company shall be at No. — street in said city of —.

Said partnership shall commence as of the date of the — day of —, 19—, and shall continue for the term of — years from date, except as herein provided.

The money which shall be in said business to the credit of said partners of said firm on the — day of —, 19—, shall remain, except as otherwise provided, as the capital of the various partners in said business, and subject to the terms hereof. Regular account books shall be kept of all transactions of the firm, and each partner, or his legal representative or agent, shall have free access thereto for the purposes of inspection, examination and copying. In all other respects, the finances and affairs of the firm shall be conducted as hitherto.

On the — day of January of each year during the continuance of said term, a full written account shall be made and taken of all the stock in trade, money, assets, credits and things belonging to and owing to said firm, and of all such matters as are generally included in annual accounts. Each partner's interest in the capital and effects of the firm shall be ascertained, and a balance sheet shall be made out and corresponding entries placed upon the books of account, so that the true condition of the firm and of each partner therein may be actually known, to the end that the amount of net profits earned may from time to time be credited on said books of account to the respective partners in the proportions and amounts to which they shall be severally entitled. In finding out the amounts due upon said balance sheets, all expenses of the business shall be charged up and

also all losses and other charges incident or necessary to the carrying on of said business.

The financial management of the firm shall be in charge of —, and each of the other partners shall devote his time and energy exclusively to the firm's business, and during the continuance of this partnership shall not be engaged or interested in any other business.

After the payment of the expenses and charges heretofore mentioned, the net profits of said business shall be divided among the said partners according to the proportion hereinafter specified, and the losses shall be borne in the same proportion; said first-named party — per cent., said second-named party — per cent. thereof and said last-named party — per cent. thereof.

Said partners shall be entitled to draw from said business in each year, on accounts of profits due to them respectively, sums of money not exceeding the following amounts, said money to be drawn in equal monthly instalments: said first-named party — dollars, said second-named party — dollars and said last-named party — dollars.

It is further agreed that the death of any of the parties hereto during the term of this agreement shall not operate to dissolve said partnership, but the same shall be carried on by the survivors until such time as said partnership shall expire by the terms hereof. The partnership capital shall remain unimpaired and no part thereof, except as above provided, shall be withdrawn by the legal representatives of any deceased partner before the expiration of this agreement, but such representatives shall be entitled to all payments and credits which said partner would have received if living, but shall have no right of active control or interference in said business. Such representative shall, however, have all other rights, including that of access to books of account of said firm which would have belonged to such deceased partner.

If no written notice shall be given by any of the parties hereto to the others within three months before the expiration hereof, of his or their desire to determine and dissolve said partnership at the date fixed for said termination, then said partnership shall

continue for one year after said expiration, upon the same terms as herein provided, and shall thereafter continue from year to year until three months' written notice shall have been given by any of said partners or the legal representative of any deceased partner, at the time and in the manner herein specified.

None of said parties hereto shall, without the consent of all the other parties, in any way use the firm name or credit, directly or indirectly, for purposes of indorsement, guaranty or otherwise, except for firm business, and none of the parties shall, without like consent, become indorser, guarantor or surety for any other purpose, except for firm business.

In witness, etc.

1. See ante, vol. 1, § 484.

#### **6105. Admission of new partner into existing firm.**

Indenture made this — day of —, 19—, between — and —, constituting the firm of — & Co., of the first part, and — (incoming partner), of the second part.

Whereas, by an indenture dated the — day of —, 19—, between the said first parties, they became partners in the business of —, for the term of — years, and have continued to be partners from that date to the present time;

And whereas the said partners have agreed to admit the said (incoming partner) into partnership with them in the said business, for the residue of said term of — years, upon the terms and conditions hereinafter mentioned, and upon the treaty for such partnership it was agreed that a valuation should be made of the whole of said partnership property and effects and that the said (incoming partner) should pay unto the said first parties one-third of the amount of such valuation, and be admitted to a proportionate share of the profits and losses of the said business;

And whereas such valuation has been made accordingly, and the value of the said partnership property fixed at the sum of — dollars:

Now this indenture witnesseth, that in pursuance of the said recited agreement, and in consideration of the sum of — dollars, being one-third of the valuation of the said partnership property, paid by the said (incoming partner) to the said first

parties, the said first parties admit the said (incoming partner) as a partner in the said business for the term of — years from the date hereof, which said business shall henceforth be carried on under the style or firm of —; and the profits and losses of the said partnership shall be equally divided and borne by the said parties hereto, and the said partnership business shall be carried on by them under and subject to the same terms, covenants, stipulations, provisos, declarations and agreements as are expressed and contained in the said hereinbefore recited indenture of partnership of the — day of —, of and concerning the said capital, stock in trade and effects, and all and singular the other matters and things therein mentioned and comprised, and that as fully and effectually to all intents and purposes as if the same terms were expressed and contained herein and inserted with the name of the said (incoming partner) herein.

Subject to the covenants, stipulations, provisos, declarations and agreements so contained in the said hereinbefore recited indenture as aforesaid, the said partnership estate and effects shall be and remain unto the said three partners constituting the said new firm of —, their respective executors, administrators and assigns, in equal shares and proportions.

In witness, etc.

**6106. Agreement by indorsement on admission into firm of new partner who brings in additional capital.**

Memorandum of agreement made the — day of —, 19—, between the above-named — and —, of the first part, and — of —, of the second part: Whereby, in consideration of the sum of — dollars, now brought in and contributed by the said second party as additional capital of the above-named partnership, it is hereby agreed as follows:

The parties hereto shall, as from the date hereof, be and continue partners for the unexpired residue of the above-mentioned term, subject in all respects to the conditions, stipulations and provisions of the above-written articles, so far as applicable, and except as varied by this present agreement.

The capital of the partnership shall be deemed to be the sum of — dollars, and to have been contributed by the parties



hereto in the shares and proportions following: that is to say, two equal fifth shares by the said —; two other equal fifth shares by the said —; and the remaining one equal fifth share by the said —.

The profits and losses shall belong to and be borne by the parties hereto in proportion to their respective shares.

The said — and — may draw out of the profits the sums mentioned in the above-written articles; and the said — may draw out of the profits money not exceeding — dollars each month.

In witness, etc.

**6107. Agreement for sale by retiring partner of his share in partnership to incoming partner, with concurrence of continuing partners.**

Indenture made the — day of —, between — of — (retiring partner), of the firm of — & Co., hereinafter called the vendor; — and — (continuing partners); and — (incoming partner), hereinafter called the purchaser.

The said vendor, with the approval hereby testified of the said continuing partners, agrees to sell, and the said purchaser agrees to purchase, all the share and interest of the said vendor in the good will of the business of —, as the same is now carried on by the said vendor in partnership with the said continuing partners, under the firm name of — & Co., and in the assets, property and capital of the said partnership, and in the profits thereof, as from the — day of —.

The purchase-money shall be the sum of — dollars, but the said purchaser shall be entitled to deduct from the purchase-money all moneys now already or at any time before completion to be drawn out by the said vendor in anticipation of his share of profits for the current year.

The purchase shall be completed on the — day of —, at the office of said firm, at which time and place the said vendor shall, upon payment of the purchase-money (subject to such deduction, if any, as aforesaid), execute a proper assignment of the said premises to the said purchaser, with such powers of attorney and other provisions as may be proper. And if from any

cause whatever, other than the wilful default of the said vendor, the purchase shall not be completed on or before that day, the said purchaser shall pay to the said vendor interest on the purchase-money (after making such deduction as aforesaid), at the rate of — per cent. per annum from that day until completion.

Proper instruments shall be executed for the indemnity of the said purchaser by the said vendor from all the debts, liabilities, and engagements of the firm, if any, entered into, accepted or given before the said — day of —, which do not appear in the books of the said partnership, and for the indemnity of the said vendor and his representatives against all the outstanding debts, liabilities and engagements of the firm which appear in the books of the partnership.

The said continuing and incoming partners shall, upon the completion of the said purchase, execute an agreement containing mutual covenants by the said continuing and incoming partners to be and remain partners in the said business of — for the residue of the term of — years from the — day of —, upon the terms, and subject to the agreements and provisions, contained in the said articles, with such variations as are rendered necessary by the introduction of the said purchaser as a partner, and the assignment to him of the share and interest of the said vendor, and for the performance and observance of the said agreements and provisions, with such variations as aforesaid, in the same manner, as far as circumstances will admit, as if the said purchaser had originally been a party to the said articles.

In witness, etc.

**6108. Retirement of one partner—Remaining partners purchasing his share.**

Agreement made the — day of — between — and —, continuing partners, and —, retiring partner.

The partnership heretofore carried on by said partners in the business of —, under the name of —, wherein the said three partners were entitled to the profits and liable to the losses of said business in equal shares, shall be deemed to have been dissolved by mutual consent as and from the — day of — last,

and the said business shall as from that date be carried on by the continuing partners.

The continuing partners shall pay to said retiring partner, at the dates and by the instalments hereinafter mentioned, the sum of —— dollars as the purchase-money for his share and interest in said partnership and the capital, property and good will thereof.

The said purchase-money shall be paid to said retiring partner as follows: the sum of —— dollars upon the execution hereof, and the balance in equal instalments of —— dollars each, payable at the expiration of successive periods of —— calendar months each from the date hereof, together with interest at the rate of —— per cent. per annum on so much of said balance as shall for the time being remain unpaid.

The said retiring partner shall not for the period of —— years from the date hereof carry on or be engaged, either directly or indirectly, and either as principal, clerk or agent, in the said business of —— within the state of ——, and shall not at any time hereafter interfere with or endeavor to divert any of the business carried on by the continuing partners. In the event of any breach of the restrictions in this clause contained by said retiring partner, he shall pay to the continuing partners the sum of —— dollars as liquidated damages.

The continuing partners shall be at liberty, if they shall think fit, to use the name of the retiring partner as part of the firm name in the business intended to be carried on by them; that is, continuing the firm name heretofore used, for the period of —— years from the date of these presents.

The continuing partners shall have the right to collect all moneys and assets of the said late partnership and may sue for, recover and receive and give effectual receipts for all debts in any wise owing and for all effects belonging to said late partnership and to settle all accounts and matters relative to said business, and to compound for or release all debts or claims belonging thereto, and to institute any actions or proceedings for compelling payment or delivery thereof, and for such purpose to use the name of said retiring partner.

The debts and liabilities of the said partnership estimated to amount to the sum of — dollars and taken into account at that sum in estimating the value and purchase-money aforesaid, shall be paid and discharged by the continuing partners, who shall indemnify the said retiring partner therefrom, and from all actions, costs, claims and demands in respect thereof.

Each of the parties shall sign and execute such further deeds or papers as the other party shall reasonably require for effectuating this agreement.

The expression "continuing partners" shall be deemed to include their successor or successors for the time being in said business so intended to be carried on by them.

In witness, etc.

(Signatures of all parties.)

## LIMITED PARTNERSHIPS.

### 6109. Certificate of formation.

STATE OF —, }  
COUNTY OF —, } ss.

The undersigned —, — and — hereby form a limited partnership pursuant to the statutes of the state of —, and for that purpose hereby certify:

That the name of said limited partnership shall be —, under which said partnership shall be conducted.

That the names, both Christian and surname, and respective places of residence of all the partners herein and hereto are as follows:

Christian Name.	Surname.	Residence.
_____	_____	_____
_____	_____	_____
_____	_____	_____

That the aforesaid — and — are general partners and the aforesaid — is special partner, respectively, herein.

That the following amounts of capital have been contributed by the aforesaid parties and partners, respectively: by — the sum of — dollars (\$—), by —, the sum of — dollars

(\$——) and by —— the sum of —— dollars (\$——), and that each of said sums has been contributed to the common stock of the said partnership.

The general nature of the business to be transacted by such partnership is —— (here state).

The partnership aforesaid is to commence on ——, 19——, and the same is to terminate on ——, 19——.

(Signatures and acknowledgment as in deeds, etc.)

1. Limited partnerships are commonly provided for by statute in the various states. The certificate of formation must be drafted to meet the statutory requirements. The above form will answer for a general outline.

2. See ante, vol. 5, ch. 153; also note to *R. S. Oglesby Co. v. Lindsey* (112 Va. 767), in Ann. Cas. 1913 B 913, 917.

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## PARTY-WALL AGREEMENTS.

### 6115. Party-wall agreement.

This agreement, made this — day of —, 19—, between — of —, party of the first part, and — of —, party of the second part, witnesseth:

Whereas the party of the first part is the owner of that house and lot numbered — on — street, in the city of —, and the said party of the second part is the owner of the lot adjoining the same, on the — side thereof and on which he is now about to erect a — building, and desires permission to insert the beams into the wall of the house belonging to said party of the first part.

Now, therefore, the said party of the first part, in consideration of the sum of — dollars, the receipt whereof is hereby acknowledged, hereby grants and covenants to the said party of the second part, his heirs, executors, administrators and assigns that he and they may, in the erection of said — building, insert the beams and floor timbers thereof into the said — wall of the house aforesaid, and that the same may remain there so long as the wall shall stand. Said covenants run with the land and bind the parties hereto, their heirs and assigns.

In witness, etc.

1. Statute of frauds, see ante, vol. 2, § 1267.
2. Agreement runs with land, see ante, vol. 4, § 3880.
3. Right to compensation does not run with land, see ante, vol. 2, § 1449n.

### 6116. Party-wall agreement—Concise form.

This agreement, made this — day of —, between — of —, state of —, and — of —, of said state, witnesseth, that the said parties, being owners of adjoining estates situated on the — side of — street, between — and — streets, in said —, the boundary line between said estates being — feet — from the — line of — street, hereby mutually grant and covenant each for himself, and his heirs and assigns, to and with the other, and his heirs and assigns, that either party

hereto, or his heirs or assigns may build a party wall of the thickness required by law on any part or the whole of the said boundary line between the said estates, which the other party, his heirs and assigns shall have a right to use as herein provided, the middle line of which wall shall coincide with said boundary line; and either party hereto, or his heirs or assigns, may extend in any direction on said line any wall so built, and may rebuild the same in case of the partial or total destruction thereof; and when any portion of any wall so built, extended or rebuilt shall be used by the party, or by the heirs or assigns of the party, by whom the portion of the wall so used was not constructed, he or they shall pay to the party who constructed the same, or to his heirs or assigns, one-half of the value at the time of such use of the whole thickness of the portion of such wall, including the foundation thereof, so used by him or them; and the sum so to be paid shall, until paid, remain a charge upon the land of the party liable to pay the same; but no covenant herein contained shall be personally binding on any person or persons, except in respect of breaches committed during his or their seizin of, or title to, the said estates. Whenever any party wall built under this agreement shall be extended in height, the chimneys previously built in such wall shall be carried up to a proper height, and any injury caused by such extension shall be made good, all at the expense of the party making the extension; and in case of dispute as to any value before mentioned, the amount thereof shall be referred to two disinterested parties to be appointed one by each party hereto, or by his heirs or assigns, said referees, in case of disagreement, choosing a third person as arbiter.

In witness, etc.

1. See *Mackey v. Harmon*, 34 Minn. 168, 24 N. W. 702; *Hoffman v. Dickson*, 65 Wash. 556, Ann. Cas. 1913 B 869.

2. See ARBITRATION AND AWARD, ante, 5190 et seq.

#### 6117. Party-wall agreement—Another form.

Whereas — of —, state of —, and — of said —, respectively own two adjoining parcels of land on the — side of — street, in —, in the county of — and state aforesaid, the line dividing said parcels being — feet — from the —

line of — street, which crosses the first-named street at a right angle, the parcel owned by the said — lying — of said line; and whereas said parties desire to provide for the erection of a party wall on said line: Now this agreement, made this — day of —, 19—, by and between said —, first party, and said —, second party, witnesseth:

Whichever party first builds adjoining said line shall erect a wall thereon, of such length as such party shall see fit, the same to be of good materials and workmanship, and in conformity with the building laws for the time being in force; but not more than — inches of wall in thickness, with its proportion of the necessary foundation, shall be placed on land of the other party without his consent.

Said wall, when so built, shall be and remain a party wall.

Whenever the owner for the time being of the other parcel uses said wall or any part thereof, he shall pay to the person, at the time of such use, owning the parcel first built upon, one-half of the then value of the entire structure of such wall, or so much thereof as he may use, including piles, or other foundations, or substructure and coping.

Either party may add to said wall in height, depth, thickness or length, and in case of damage may repair, or in case of destruction rebuild, said wall and any addition thereto, carrying up flues and the like to leave the other party as near as may be in as good condition as before, and using good materials and workmanship, and conforming to the building laws, and doing work from his own side if the other side is built upon; and in case of repairs, one-half of the cost of such repairs shall be paid to the party making the same by the owner of the other parcel, on demand; and one-half the value of any such rebuilt wall, or of any addition made as aforesaid to any wall, when used, shall be paid for like the original structure. No addition to the thickness is to be made by either on land of the other unless such land is vacant, and in no event so as to cause, inclusive of such addition, more than — inches of wall, with its proportion of the necessary foundation, to be on land of the other party, without the consent of such party.



Said parties mutually covenant, for themselves and their respective heirs and assigns, each to and with the other, his heirs, representatives and assigns, to observe the above agreement, and that the covenants herein contained shall run with the land, but no owner is to be responsible except for his acts or defaults while owner.

In witness, etc.

**6118. Agreement between adjoining owners as to boundaries and rights of light and air.**

This indenture is made the —— day of ——, between ——, owner in fee, of the first part; ——, his mortgagee, of the second part; and ——, adjoining owner, of ——, of the third part.

Whereas said first party is seized in fee simple of the land and premises marked with his name and colored blue on the plan hereto annexed;

And whereas said —— (adjoining owner), is seized in fee simple of the land and premises marked with his name and colored green on said plan;

And whereas disputes have arisen between said owners in respect to the boundaries of their respective premises, and their respective rights of light and air, the said parties, for the purpose of determining such disputes and defining their respective rights, have entered into the mutual covenants and declarations herein contained.

Now, this indenture witnesseth, that in consideration of this agreement, and of the covenants hereinafter contained, each of the said parties hereby covenant with each of the others, his heirs and assigns in the manner following:

The wall shown on said plan, dividing the respective properties of said owners, shall become and remain a party wall, and the common property of said owners, their respective heirs and assigns; so that either of them shall be at liberty to use said wall by inserting timbers or other material up to, but not beyond, a vertical line drawn through the center and along the entire length of said wall, or not otherwise to use the said wall in any manner that may interfere with the equal use of the other half of the wall by the other owner.

Nothing herein contained shall interfere with the right of each of said adjoining owners, their respective heirs and assigns to carry up the buildings on their own side of said wall to any height, and for that purpose may extend the height of said wall.

The open area, colored red on said plan, shall remain of not less dimensions than are shown on said plan, open, unobstructed and not built upon; but nothing herein contained shall prejudice the right of each of said parties, their respective heirs and assigns, to carry up the buildings on their own respective side of said area to any height whatsoever.

In witness, etc. (Signatures and seals of parties.)

1. Statute of frauds, see ante, vol. 2, § 1257.

#### 6119. License to use wall of adjoining building.

This agreement, made the —— day of ——, 19——, by and between —— of ——, first party, and —— of ——, second party, witnesseth, that whereas said first party owns the house and lot numbered —— on —— street, in the city of ——, and the said second party owns the lot adjoining the same, on the —— side thereof, on which last-mentioned lot said second party is about to erect a brick building, and desires permission to insert the beams and floor timbers thereof into the said —— wall of the house belonging to the said first party:

Now, therefore, the said first party, in consideration of the sum of —— dollars to him paid, the receipt whereof is hereby acknowledged, doth hereby grant and covenant to and with the said second party, his heirs, executors, administrators and assigns, that he and they may, in the erection of said brick building, insert the beams and floor timbers thereof into the said —— wall of the house aforesaid, and that the same may there remain so long as said wall shall stand. The covenants aforesaid are to run with the land and to bind the parties hereto, their heirs and assigns.

In witness, etc.

#### 6120. Receipt in payment for party wall.

Know all men by these presents, that I, ——, named in a certain agreement between —— and myself as to a party wall on

the line between our estates described in said agreement, dated the — of —, 19—, and recorded with — county deeds, book —, page—, do hereby acknowledge that I have received from —, successor in title of said —, the sum of — dollars, in full payment for that portion of the — half of said wall used by him up to date, and to a depth of — feet from the front line of his house, and do hereby acquit and release him from all obligation of payment for said portion of said wall, said agreement remaining otherwise in full force.

Witness my hand and seal this — day of —, 19—.

**6121. Brief stipulation in regard to party wall to be inserted in deed of part of lot.**

Subject also to, and with the benefit of, the stipulations hereinafter following, that is to say: one-half of all foundations, stone-work, wall and fences in the — boundary line between said parcel and the parcel of land adjoining thereto belonging to the grantor, may and shall be placed on each of said parcels, and any owner of either of said parcels using and enjoying any part of said foundations, stone-work, wall and fences built by the other, shall pay for such part the actual value of one-half of said foundations, stone-work, walls and fences to the owner thereof.

1. See DEEDS, ante, 5630 et seq.

**6122. Grant of right to place footings of wall partly in land of adjacent owner.**

Indenture made the — day of — between — (grantor), of the one part, and — (grantee), of the other part:

Whereas the said — (grantee) owns in fee simple the land delineated on the plan hereto annexed, which is bounded on one side by land of which the said — (grantor) is owner in fee simple;

And whereas the said — (grantee) desires to erect a building with a wall which will be the boundary between the lands of said adjoining owners;

And whereas the footings or foundations thereof must be laid partly upon the land of the said — (grantor), it has been mutually agreed that said — (grantee) shall have the right so to lay the same for the consideration hereinafter expressed.

Now this indenture witnesseth that in pursuance of said agreement and in consideration of — dollars paid by said — (grantee), the said — (grantor) hereby grants unto said — (grantee), his heirs and assigns full liberty and authority to enter upon his said land and to excavate the same to the necessary depth and width along the said boundary line between said respective lands, and to lay and forever to keep and maintain in such excavation at a depth of not less than — feet from the surface all such footings or foundations of concrete, rock, brick or other substance proper for the foundation of such building. And also to erect scaffolding on the land of said — (grantor) and to use such scaffolding during the erection of such wall for all usual building purposes. And also from time to time, by means of a cradle along from the top of said wall over the land of said — (grantor), and by workmen standing on said land of —, to repair and point said wall.

And said — (grantee), hereby covenants with the said — (grantor) that he, his heirs or assigns will, in making such excavation and erecting such wall, do as little damage as possible to the land of said — (grantor), and will fill up such excavation, remove the scaffolding and restore the surface of the land to its present condition, so far as possible. And also will, after repairing or pointing the said wall from time to time, carefully remove all debris which may have fallen on to said land in the course of such repairing and pointing, so as to leave the land in its usual condition.

In witness, etc.

(Signatures and seals of both parties.)

### 6123. Agreement establishing wall as party wall.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That whereas, the parties hereto are the respective owners of two adjoining tracts of land situate in the county of —, state of —, and described as follows, to wit: (here describe tracts owned by each party) and

Whereas, the said party of the first part has erected a wall upon said boundary line between said tracts; and

Whereas, it is desired that the parties hereto shall establish the same as and for a party wall;

Now, in consideration of the sum of ——— dollars paid by second party to said first party, the receipt whereof is hereby acknowledged, the said party of the first part does hereby grant, bargain, sell, convey and assign to the said party of the second part, his heirs and assigns the right hereby to use the said wall as and for a party wall, and it is by the parties hereto mutually agreed that either party, their heirs or assigns may rebuild the same in case of partial or total destruction thereof. Either party may add to said wall in height, depth, thickness or length, and in case of damage may repair, or in case of destruction rebuild said wall, or any portion thereof, carrying up flues and the like to leave the other party as near as may be in as good condition as before, using good materials and workmanship, and conforming to the building laws, and in case of repairs, one-half of the cost of such repairs shall be paid to the party making the same by the owner of the other tract on demand, and one-half of such rebuilt wall, or any addition made as aforesaid to any wall when used, shall be paid for like the original structure. The party of the second part shall have the right and privilege of putting joists in said wall and using the same in all respects as a party wall between the premises of the parties hereto.

In witness whereof, etc.

## PATENTS.

**6125. License—Shop-right.**

In consideration of the sum of — dollars, to be paid by the firm of — of —, in the county of —, state of —, I do hereby license and empower the said — to manufacture in said — (or other place agreed upon) the improvement in —, for which letters patent of the United States, No. —, were granted to me, the — day of —, 19—, and to sell the machines so manufactured throughout the United States, to the full end of the term for which said letters patent are granted. Signed at —, in the county of — and state of —, this — day of —, 19—.

1. See also, ASSIGNMENTS, ante, 5296-5301.

**6126. License—Not exclusive—With royalty.**

This agreement, made this — day of —, 19—, between — of —, county of — and state of —, first party, and — of —, county of — and state of —, second party, witnesseth, that whereas letters patent of the United States, No. —, for improvement in —, were granted to the first party, on the — day of —, 19—; and whereas the second party desires to manufacture —, containing said patented improvements: Now, therefore, the parties have agreed as follows:

The first party hereby licenses and empowers the second party to manufacture, subject to the conditions hereinafter named, at their factory in —, and in no other place, to the end of the term for which said letters patent were granted, —, containing the patented improvements, and to sell the same within the United States.

The second party agrees to make full and true returns to the first party, under oath, upon the first day of — and — in each year, of all —, containing the patented improvements, manufactured by them, and keeping separate books of account, open to the inspection of the first party.

The second party agrees to pay to the first party — dollars as a license fee upon every — manufactured by said second party containing the patented improvements; provided, that if the said fee be paid upon the days provided herein for semiannual returns, or within — days thereafter, a discount of — per cent. shall be made from said fee for prompt payment.

Upon a failure of the second party to make returns, or to make payment of license fees, as herein provided, for — days after the days herein named, the first party may terminate this license by serving a written notice upon the second party; but the second party shall not thereby be discharged from any liability to the first party for any license fees due at the time of the service of said notice.

In witness, etc. (as in second form above).

**6127. Exclusive license for a term of years for fixed sum and royalty.**

Agreement made this — day of —, 19—, between — of —, herein called the patentee, and — of —, herein-after called the licensee, which expressions, patentee and licensee, shall include executors, administrators and assigns, where the context so requires or admits.

Whereas, letters patent of the United States, dated —, 19—, numbered —, were granted to the patentee for an improvement in —; and whereas, the patentee has agreed with the said — to grant him a license to use and vend the said invention to the extent and subject to the restrictions hereinafter expressed:

Now this agreement witnesseth, that in pursuance of said agreement, and in consideration of the sum of — dollars now paid by said licensee to the said patentee, and of the rent or royalties hereinafter reserved, the patentee hereby grants unto the licensee the sole and exclusive license to use the said invention during the term of — years from the date hereof, and to sell and dispose of all goods manufactured according to the said invention, when and as the licensee shall think fit, for his own use and benefit absolutely.

The licensee shall pay to the patentee for every — manufactured by the licensee according to the said invention the roy-

alty or sum of —, to become due and to be paid on the first day of — and the first day of — in each year during said term, for the preceding half-year ending on the first days of — and — previous, respectively, to which latter dates the accounts hereinafter provided for are to be made up.

The licensee shall at all times keep accurate accounts, and shall render a full written statement thereof to the patentee on or before the first days of — and — in each year, for the preceding half-year, showing all goods manufactured under this license during the half-year ending on the said first days of — and — previous, respectively; such statements, if the patentee shall so require, to be verified by oath of the licensee, or of some one in his behalf.

The licensee shall affix upon every article manufactured by him under this license a label or plate, to be supplied by the patentee, containing an inscription giving the date of the patent and the patentee's name, and the licensee shall not sell any article so manufactured without such a label or plate. All machines used by the licensee under this license shall have a plate, furnished by the patentee, containing a like inscription affixed to the same, and no such plate shall be removed from any machine without the patentee's consent, and no machine shall be considered duly licensed unless such plate shall be affixed thereto.

The licensee shall not, either directly or indirectly, use the said invention otherwise than in accordance with this license.

The patentee shall, when required, give to the licensee such assistance respecting the mode of using the invention, and all processes connected therewith, as may be necessary to enable him to use the invention to the best advantage.

If at any time hereafter, during the continuance of this license, the patentee shall make any further improvement in the said invention, or the mode of using the same, or shall become the owner of any such improvement, then in every such case he shall communicate such improvement to the licensee, and give him full information respecting the mode of using the same, and the licensee shall be entitled to use the same without paying any further royalty in respect thereof.



In case the said letters patent shall be infringed, the patentee shall, at his own cost, take all necessary proceedings effectually to defend the same; and, in default of his so doing, it shall be lawful for the licensee, in the name of the patentee, and at his cost, to take all necessary proceedings to defend the same; or it shall be lawful for the licensee, by written notice given to the patentee, or left at his usual or last place of business or residence, to determine this agreement.

The licensee shall not at any time dispute the validity of said patent.

The licensee shall not assign this license, or any part thereof, or grant any sub-license to any person, without the patentee's written consent.

The patentee shall not, at any time during the continuance of this license, use the said invention, or any future improvement thereof, or grant any license to any other person to use the same, or any such improvement.

Provided always, that if any part of the royalties shall at any time be in arrear for — days after the same shall become due, or if the licensee shall become bankrupt or insolvent, or enter into any composition with his creditors, or shall make any default in performing any of the agreements herein contained, then, and in any such case, it shall be lawful for the patentee, by written notice given to the licensee, or left for him at his usual or last place of abode or business, to revoke this license, which shall thereupon become void, without prejudice to any right of action or remedy of the patentee for the recovery of any moneys then due to him hereunder, or in respect of any antecedent breach of any agreement herein contained.

Provided always, that if the licensee shall discontinue the manufacture of said articles under said letters patent, or shall not manufacture at least — in any one year, commencing on the — day of —, the patentee shall be at liberty, by written notice given as aforesaid, to determine this license, in which case the same shall cease and become void, without prejudice to any right of action or remedy of the patentee for a recovery of any moneys then due to him hereunder.

Provided always, that if the licensee shall die during the said term, then this license shall become void, without prejudice to any right of action or remedy to the patentee for the recovery of any moneys then due to him hereunder.

Provided always, that this license may be determined at any time after the first — months by either party, on his giving to the other, or leaving at his usual or last known place of business or abode, — calendar months' written notice of his intention so to do, and at the expiration thereof this license shall be void, but without prejudice to the remedies of either party for any antecedent breach of any agreements herein contained.

In witness, etc.

1. See ante, vol. 2, §§ 838-840.

**6128. Assignment of license to manufacture patented article.**

This indenture, made this — day of —, between — of —, "the vendor," of the one part, and — of —, "the purchaser," of the other part: Whereas, by a license under seal dated —, and made between —, the licensor, and the vendor, the said licensor granted unto the vendor and his assigns the sole and exclusive right within the city of — to manufacture articles according to the invention mentioned in said license, and the letters patent in respect thereof, for the residue of the term of fourteen years comprised in the said letters patent, at royalties payable half-yearly on every — day of — and — day of —, and subject to the covenants and conditions therein contained; and whereas the vendor hath, from the date of the said license up to the present time, worked the said invention in the said city in accordance with the terms thereof; and whereas the vendor lately agreed with the purchaser for the sale to him of his business in the said city of manufacturing and selling the said articles, and the business of a — as from the said — day of — last; and whereas it was part of the said agreement that the purchaser should purchase the said license for the sum of — dollars:

Now this indenture witnesseth, that in consideration of — dollars, the vendor hereby assigns unto the purchaser all that the said license and the full benefit thereof; to hold the

same unto the purchaser and his assigns subject to the covenants and conditions therein contained, and henceforth on the part of the licensee to be performed or observed: and the vendor hereby covenants with the purchaser that, notwithstanding anything by him done or omitted or knowingly suffered, the said license is now valid and subsisting and not void or voidable, and that all the royalties reserved by the said license have been paid up to the — day of — last, and that all the covenants and conditions therein contained, and on the part of the licensee to be observed and performed, have been observed and performed up to this present time; and the purchaser hereby covenants with the vendor that he will, as from the said — day of — last, pay the royalties and other sums by the said license reserved, and also will perform and observe all the covenants and conditions therein contained and on the part of the licensee henceforth to be performed, and keep the vendor indemnified against all actions, claims and expenses in respect of the said royalties, sums, covenants and conditions, or any of them respectively.

In witness, etc.

1. See ante, vol. 2, § 838.
2. See ASSIGNMENTS, ante, 5296-5301.

**6129. Agreement for advances to aid inventor in perfecting his invention and obtaining letters patent.**

Agreement made this — day of —, 19—, between — of —, of the first part, and — of —, of the second part. Whereas the said first party has invented an improvement in —, for which he intends to obtain letters patent after having perfected and tested his invention, and has expended the sum of — dollars upon the same; and whereas he has now requested the second party to advance money to promote the success of said invention and to obtain letters therefor: Now it is agreed as follows:

The said second party agrees to advance the further sum of — dollars, toward testing and perfecting the said invention, and obtaining letters patent therefor; and if any further sum be required for such purpose, the said parties agree each to pay one-half thereof, provided that the said second party shall not

be under any obligation to advance a larger sum in the whole than — dollars.

The said first party agrees to use his best endeavors to protect the said invention, and to obtain the grant of the said letters patent in his own name; and he further agrees that when such letters patent have been granted, he will assign the same and all improvements hereafter made by him upon said invention, so that the premises shall be vested in the said parties hereto as tenants in common in the shares following, namely: The said first party, — shares, and the said second party, — shares; and the said parties shall, as well before as after the said assignment, be entitled to the premises in the shares last aforesaid.

When said invention shall have been perfected, and letters patent for the same shall have been obtained, the same shall be sold for the best price obtainable, either to third persons or to a corporation or partnership, in which the said parties shall be interested, to be formed for working the same; or licenses shall be granted to others for the working of the same, as the said parties shall mutually agree and determine. All moneys, or other valuable considerations, received from the sale of the said patent, shall be divided between the said parties in proportion to their interest in the said invention and letters patent as above determined.

In witness, etc.

1. See ante, vol. 2, § 1292n; vol. 3, § 2319.

#### 6130. Agreement for working patent.

Agreement made this — day of —, 19—, between — of —, of the first part, and — of —, of the second part. Whereas the said first party has invented an improvement in —, for which letters patent of the United States, dated —, 19—, and numbered —, have been granted to the said first party, and whereas the said second party has agreed to advance money and to enter into arrangements for working the same, for the joint benefit and account of said parties: Now, therefore, it is agreed as follows, namely:

1. That said second party shall pay to the said first party, upon the execution hereof, the sum of — dollars; and the first

party shall thereupon assign to the second party a — undivided interest or share of said letters patent, and of all improvements which the first party may hereafter make in said invention.

2. The said parties shall each advance and contribute one-half part of all further moneys which may be required for working the said patent, and of all costs and expenses of protecting and defending the same from infringement or otherwise.

3. All advances and payments which shall be made by the said parties, respectively, under the second clause hereof, shall be repaid to them with interest at the rate of — per cent. per annum out of the proceeds to be derived from time to time from the said invention, including the royalties that may be received for licenses, or from the sale of territorial rights, or otherwise; and the balance of such proceeds, after the payment of such advances, with interest, and the expenses of working said patent, shall be divided between the said parties in the proportions in which they are to be interested in said patent.

4. In case the proceeds from said invention shall not be sufficient for the repayment of said advances, with interest, as aforesaid, neither of the said parties shall have any claim against the other of them in respect of such advances and interest: provided, however, that in case either party shall at any time make advances in excess of the proportion in which he is bound to contribute the same, he shall be entitled to recover one-half part of such excess from the other of said parties, with interest at the rate aforesaid, and the same shall be a charge upon the share and interest of such other party in the said patent.

5. The said first party shall give so much time and attention as may be necessary for working and developing the said invention, and shall use his best endeavors to promote the success thereof; but the said second party shall not be bound to devote more time and attention than he shall think fit.

6. During the continuance hereof, neither of the said parties shall, without the other's consent, grant any license for working the said patent, or sell or dispose of his share in the same, or assign any interest or right thereunder, or make any payment, or incur any expenses, debts, or liabilities in respect thereto; and in

case any payment, debt or liability shall be so made or incurred without such consent, the same shall be deemed to be made or incurred on the separate and individual account of the party making or incurring the same, and shall be borne by him exclusively, and the other of the said parties shall be indemnified by him in respect to the same.

7. The said patent shall be worked and the business thereof carried on in the name of the said first party as patentee, and proper accounts shall be kept by him of all transactions relating thereto, and all moneys received in respect of the premises shall be paid into a bank to an account to be kept in the joint names of the said parties, and shall not be paid out except upon the joint check of both parties. The books of account and all documents relating to the said patent shall be kept in the custody of the said first party, at his office, or such other place as he may think fit, but so that the said second party may at any time have access thereto. The accounts relating to the said patent shall be made up and balanced half-yearly on the — day of — and the — day of —.

8. This agreement shall remain in force until the expiration of the term of the said letters patent, or of any renewal or extension thereof, or of any further letters patent obtained from any improvements as aforesaid, in case both parties shall so long live, but subject to the right of either party to determine this arrangement at the expiration of the first — years from the date hereof, on giving — calendar months' previous written notice to the other of them; and in the event of the said arrangement being determined by the death of either party or by notice as aforesaid, the said letters patent and premises, and the royalties or other proceeds to be thenceforth derived from any licenses granted previously to such determination, shall belong to the said parties or their representatives in the shares aforesaid; and either of said parties, or their representatives, shall thenceforth be entitled to work and use the said invention, and to grant licenses (not exclusive) for working and using the same, without being liable to account to the other for the profits or royalties to be derived from the same.

9. The said first party shall, during the continuance hereof, take all such proceedings as the said second party shall require for keeping up the said patent, and protecting and defending the same from, and obtaining damages or other compensation for, infringement, or otherwise defending the said patent, or obtaining renewals or extensions of the term thereof, or amending the specifications thereof; and the costs and expenses of all such proceedings as last aforesaid shall be considered as part of the expenses hereinbefore in the second article referred to.

10. In case either of the said parties, during the continuance hereof, shall be of opinion that the same is not likely to prove remunerative, and shall desire to abandon the same, but the other party shall desire to continue the working of the same, the said first-mentioned party may, by written notice to the other, declare his intention to abandon the same, and this arrangement shall thereupon cease, and the party giving such notice shall not be under any further liability in respect of the expenses of working the said patent; and the said patent, and the profits and proceeds thereof, shall thenceforth be the absolute property of the party to whom such notice shall be given, and such assignments shall be executed as shall be necessary for vesting the same in him: provided, that if the moneys advanced by either party previously to the said notice shall exceed the proportion which he was bound to contribute as aforesaid, one-half part of such excess shall, in any event, be repaid to him, with interest, by the other party.

11. The mention in this agreement of either of the said parties hereto by name, or otherwise, shall be deemed to include his executors, administrators and assigns, unless otherwise inconsistent with the terms and provisions hereof.

In witness, etc.

**PLEDGES AND COLLATERAL SECURITIES.**

See BONDS.

**6135. Collateral notes pledging stock with power of sale.**

\$——. BOSTON, November ——, 19——.

Six months after date, for value received, I promise to pay to ——, or order, —— dollars, and interest at the rate of —— per centum per ——, for such further time as said principal sum or any part shall remain unpaid, I having deposited with this obligation, as collateral security, —— shares of the capital stock of the —— Bank of ——, with authority to sell the same without notice either at public or private sale, or otherwise, at the option of the holder or holders hereof, on the nonperformance of this promise, he or they giving me credit for any balance of the net proceeds of such sale remaining after paying all sums due from me to the said holder or holders, or to his or their order. And it is further agreed that the holder or holders hereof may purchase at said sale.

1. See as to pledges, in general, ante, vol. 4, §§ 3030-3062.

2. See also, **BILLS AND NOTES**, 5365 et seq, and **CHATTEL MORTGAGES**, ante, 5968 et seq.**6136. Pledge of shares of stock.**

To ——. NEW YORK, ——, 19——.

Having borrowed from you the sum of —— dollars, which is to be repaid to you on the —— day of ——, and which sum is secured by my promissory note in your favor for that amount bearing even date herewith, I have, for further securing the repayment of such sum, transferred —— shares of the —— railroad company in your name in the books of the said company, to be held by you on the following terms, namely:

All dividends which may be declared upon the shares are to be received by you and paid to me.

All new shares created in respect of the above shares are to be held by you as the original shares, the calls or assessments thereon to be paid by me.



On the — day of —, 19—, upon being repaid the amount advanced as above, with interest thereon at the rate of — per cent. per annum, the said — shares, and all newly created shares (if any), are to be transferred to me.

If I shall make default in repayment of the said advanced sum on the — day of —, 19—, or in payment of the said calls as they shall become due, you may at any time afterward, on giving me — days' notice of your intention so to do, and without being liable for any diminution in prices which may have taken place in the meantime, and without any further consent by me, sell the said — shares, and any such new shares as aforesaid, at such price or prices, and in such manner in all respects, as you shall think proper, and may retain out of the proceeds the amount then due to you, with interest thereon after the rate aforesaid, and all costs attending the said sale, and may demand and claim of me any balance that may remain unpaid by the means aforesaid. (Signature of pledgor.)

I, the undersigned (pledgee), agree to hold the said shares upon the terms and conditions before mentioned.

1. See ante, vol. 4, § 3040.

### 6137. Pledge of chattels.

Memorandum of agreement between —, the borrower, and —, the lender.

It is agreed by and between said parties as follows:

The lender has lent the sum of — dollars to the borrower, and the borrower has delivered to the lender the chattels specified in the schedule hereto annexed, by way of pledge for the payment of said sum on or before the — day of — next, together with interest thereon from the date hereof at the rate of — per cent. per annum, and all expenses of insuring and warehousing the said chattels, and all expenses that may be incurred by the lender in keeping said chattels in repair, and all expenses which the lender may incur in enforcing this pledge, and all costs and charges which the lender may be entitled by law to add to said loan.

The borrower hereby promises to repay said loan, with the expenses and costs hereinbefore specified.

The lender may, after — days' notice of sale, served upon said borrower, or, in case he cannot be found, after — days' publication of such notice in — newspaper published in the town of —, sell said chattels, or so much of them as shall be sufficient to pay said loan, and interest, and expenses, at public auction in such lots as the lender may deem best.

The lender shall not be liable to the borrower for any losses that may occur during his custody of said chattels, or by reason of the sale thereof.

In witness, etc.

(Signatures of both parties.)

1. See ante, vol. 4, § 3034.

**6138. Memorandum of pledge of articles as security for loan.**

To — of —.

I hereby deposit with you the articles specified in the annexed schedule as security for the payment to you of my note of this date, for the sum of — dollars, payable in — months, with interest thereon at the rate of — per cent. per annum; and I hereby authorize you, in the event of the nonpayment of said note at maturity, to sell the same at public or private sale, at such time as you may think proper, without giving notice to me of the time or place of sale; and out of the proceeds thereof, after paying all expenses attending such sale, to retain the amount of said note, both the principal and interest thereof, paying the residue, if any, to me. Dated this — day of —, 19—.

1. See, as to requirement of delivery of property, ante, vol. 4, § 3036.

**6139. Memorandum of pledge of shares of stock, with power of sale.**

I have this day deposited with — & Co., of —, bankers, the certificates numbered respectively — and —, of — shares held by me in the — company, for securing the payment to the said — & Co., on demand, of the sum of — dollars this day advanced by them to me, with interest thereon at the rate of — per cent. per annum; and I declare and agree that the said — & Co. shall have full power, if the said sum of — dollars and interest shall not be paid on demand as

aforesaid, to sell the said shares for the best price they can obtain for the same, at public or private sale, and in such way as the said — & Co. may think fit. Dated, etc.

1. See, as to sale under contract, ante, vol. 4, § 3059.

**6140. Receipt for collaterals.**

Received of — of —, a certificate for — shares of the capital stock of the — railroad company, and a bond of said railroad company for — dollars, dated the — day of —, payable to bearer — years after date, as collateral security for the prompt payment at maturity of his promissory note for — dollars, dated the — day of —, and payable — months after the date thereof, said securities to be returned to him in case said note be thus paid.

In case of nonpayment of said note at maturity, I am at liberty, and am hereby authorized by him, to sell the securities, or such portion as may be necessary, either at public or private sale, or at the brokers' board, without notice, and apply proceeds to the payment of said note and expenses.

**6141. Collateral trust loan upon pledge of bonds and stocks of other railroads, with power of sale and provision for sinking fund.**

This indenture, made the — day of —, 19—, between the — railroad company, a corporation created by the laws of the state of —, of the first part, and the — trust company, of —, trustee, of the second part, witnesseth, that whereas the said railroad company, in pursuance of its corporate powers, has acquired and doth now hold, inter alia, certain securities hereinafter named and described; and whereas the said railroad company is desirous of making a loan for proper corporate purposes; and whereas on the — day of —, 19—, at a meeting of the board of directors of the said railroad company, it was resolved as follows: Resolved, that in pursuance of the authority in it vested by law, this company doth make and execute its bonds for the sum of ten millions of dollars (\$10,000,000); that is to say, ten thousand bonds, to be numbered consecutively from one to ten thousand, both inclusive, each for the principal sum of

one thousand dollars (\$1,000), to be dated the first day of —, 19—, payable in thirty years from the date thereof; said bonds to be in the following form: United States of America, Commonwealth of —. Four and a half per cent. loan of \$10,000,000, secured by collaterals deposited in trust.

\$1,000.

No. —.

The — railroad company acknowledges itself to be indebted to the bearer in the sum of one thousand dollars, in gold coin of the United States of America, which sum the said company promises to pay to the bearer, at the office of the said company, in the city of —, in the state of —, on the first day of —, 19—, with interest in the meantime thereon at the rate of four and a half per centum per annum, payable in like gold coin, semi-annually, on the first days of the months of — and — in each year, to the bearer, as the same becomes due, at the office of the trustee hereinafter named, on the delivery of the annexed coupons therefor.

The principal and interest of this bond are payable without deduction for any tax or taxes now imposed or hereafter to be imposed thereon, either by the laws of the United States of America or of the state of — for national or state purposes, which the said company is or may be required by any of said laws, to retain therefrom, the said company hereby agreeing to pay the same.

This bond is one of a series of ten thousand bonds for one thousand dollars each, all of like date, tenor and effect, numbered consecutively from number one to number ten thousand, both inclusive, and amounting in the aggregate to ten millions of dollars, the payment whereof is secured by the assignment of certain securities representing a par value of twelve million five hundred thousand dollars to the — trust company of —, as trustee, and also by a sinking fund upon the terms, and as is more particularly described and set forth in a deed of trust bearing even date herewith, made and delivered to the said trustee by the said — railroad company, assigning said securities to said trustee for the security of said bonds, without priority or distinction as between them, to which reference is hereby made for the terms

and conditions of the same, and for the terms and conditions upon which this bond is issued.

This bond shall pass by delivery, or by transfer on the books of the railroad company, at its office in the city of ——. After a registration of ownership certified hereon by the transfer agent of the said company, no transfer shall be valid as to the principal thereof except upon the books of the said company, unless the last transfer be to bearer, which shall restore its transferability by delivery. But this bond shall continue subject to successive registrations, and transfers to bearer, as aforesaid, at the option of each holder: provided, that the coupons issued with the said bond shall, notwithstanding such registration, continue to pass by delivery.

In witness whereof, the said company has caused its corporate seal to be hereunto affixed, and this bond to be signed by one of its vice presidents, and the execution hereof to be attested by its secretary, and has also caused the coupons hereto annexed to be engraved with the signature of its treasurer, at the city of —, this first day of —, 19—.

\_\_\_\_\_,  
Vice President.

Attest: \_\_\_\_\_,  
Secretary.

With coupons thereto attached for the instalments of interest to become due upon such bond, in the following form:

#### COUPON.

The — railroad company will pay to the bearer on the first day of —, at the office of the — trust company of —, in the city of —, twenty-two and fifty one-hundredths dollars in gold coin of the United States of America, being six months' interest on its collateral trust bond No. —, payable clear of the taxes mentioned in the said bond.  
\$22 50-100.

\_\_\_\_\_,  
Treasurer.

And that the following form of certificate shall be placed upon each and all of the bonds issued under the security of said deed of trust: Trustees' certificate. The — trust company of

— hereby certifies that this bond is one of ten thousand bonds secured by the pledge and transfer of certain securities, as therein mentioned, received and held upon the trust in said bond declared, and upon the further trusts and terms set forth in the deed of trust therein referred to. The — trust company of —, Trustee.

By ———,

President.

Resolved, That to secure the payment of the said bonds this company do make, execute and deliver to the — trust company of —, as pledges and transferees in trust, an indenture and agreement pledging and transferring to the said trustees the following bonds and securities, namely (described); subject to the terms and conditions set out in the following form of indenture, agreeing to pledge and transfer said securities to secure said bonds, which is hereby approved.

(And the present form of indenture was then submitted to and approved by the board, and ordered to be spread in extenso upon its minutes; it was then further)

Resolved, That either of the vice presidents of this company be, and he is hereby, authorized to affix the corporate seal of this company to each of said bonds, and to sign the same as such vice president, and cause the engraved signature of the treasurer to be annexed to the interest coupons thereon, and that the secretary be, and he is hereby, authorized to attest such execution, and that such vice president be authorized to deliver the same, and to receive the proceeds thereof, and pay the same into the treasury of this company; and that such vice president be, and he is hereby, authorized for and on behalf of this company, and as their act and deed, to affix their corporate seal to said indenture and agreement, to be duly attested by the secretary, and duly acknowledge and deliver the same:

Now, therefore, this indenture and agreement, made by and between the said railroad company and the said — trust company of —, as trustee, witnesseth, that the parties hereto, in consideration of one dollar each to the other in hand paid, and other valuable considerations, do each covenant, promise and

agree, for themselves, their successors and assigns, in manner and form following, namely:

1. The said railroad company, by virtue of its charter authority and all other power it in that behalf enabling, shall and doth hereby transfer and deliver to the said trustee the following securities, having the par and appraised values respectively stated, namely (described as above, with valuation at par and as appraised). To be held by the said trustee, subject to the reservations, terms and conditions in this indenture particularly set out, and subject to which the said transfers and delivery of said securities are made by said railroad company, and are accepted by said trustee.

2. The said railroad company, its successors or assigns shall and will punctually pay to the holders of the bonds aforesaid, intended to be hereby secured, the interest thereon, when and as the same shall become due and payable, according to the terms and conditions in the said bonds set forth and contained, and shall and will also, whenever the said principal sums of the said bonds shall, according to the provisions thereof, become due and payable, fully and entirely pay, satisfy and discharge the whole of the said bonds, both principal and interest, without further delay, and without any deduction therefrom for any state or United States taxes imposed thereon, which the said railroad company may be required by law to retain, the said railroad company hereby agreeing to pay the said taxes, as mentioned in the said bonds.

3. If at any time hereafter, after demand, the said railroad company shall make default, or neglect, refuse or omit to pay interest upon any of the said bonds as therein provided, or to pay any instalment of sinking fund when and as the same shall become due, as hereinafter provided, and such default shall continue for sixty days after the said interest or sinking fund shall become due and payable as aforesaid; or shall, after demand, make default, or neglect, refuse or omit to pay the principal sum of each and all of the said bonds intended to be hereby secured, for any period exceeding sixty days after the same shall become due and payable as aforesaid, then and in either such case

it shall be the duty of the said party of the second part, or whoever may be the trustee or trustees for the time being under this indenture, upon the written request of the holders of one-fourth in amount of the said bonds outstanding and unpaid, to sell at public sale, for the best price that can be obtained therefor, the whole of the securities hereby pledged or substituted for those pledged as herein provided and not previously released under the terms of this trust, or such portions thereof as may be necessary to pay the said bonds and all arrears of interest thereon, and all expenses attending as well the execution of this trust as the said sale, and any other costs and charges that may be necessarily incurred in consequence of such sale, in such lots or parcels, however, as said trustee or trustees may deem most beneficial, and with authority to the said trustee or trustees for the time being to adjourn, from time to time, the sale of the whole or any part of the said securities, in their discretion, and make, execute and deliver to the purchaser the necessary transfers and conveyances therefor, freed from all and every the trusts hereby created, and without liability on the part of the purchaser to see to the application of the purchase-money; and shall and will hold the moneys which may, by reason of any such sale, come into the hands of the said trustee for the time being, as the same shall be received, for payment, in the first place, of the interest due on the said recited bonds respectively in full; and in the second place, to the payment and discharge of the principal sums of said recited bonds to the several holders thereof in full, if sufficient for that purpose; but if not, then to and among the several holders thereof pro rata, so that no priority shall be given to any bond or bonds which shall have been issued as aforesaid and secured by this deed of trust and be then outstanding; and if any surplus of such moneys shall thereafter remain, then the said trustee or trustees for the time being shall and will pay over such balance of the trust funds in their hands, and assign and convey any residue of the trust estate or property unto the said railroad company, their successors or assigns, for their sole use and benefit; it being hereby expressly understood and agreed by and between the parties hereto, that in case default in the payment



of interest or sinking fund shall be made as aforesaid, then the whole of the said bonds shall, upon the demand of the holders of one-fourth of the said bonds being made as aforesaid, become due and payable forthwith, anything herein or in the said bonds contained to the contrary thereof notwithstanding.

4. The said railroad company shall have (at any time, and from time to time, before default and written request to make sale, as in the third article is provided) the right to sell and dispose of (free and discharged from the trust hereby created) the whole or any part of the said securities, at not less than their market value nor less than the appraised value affixed thereto herein; also the whole or any part of the securities at any time hereafter substituted in lieu of securities hereby pledged under the terms of this article, at not less than they shall have been taken for under the terms and provisions of this article; also to withdraw said securities, or any portion of them, from time to time, and substitute for them other securities of equal market value, not less than the appraised value of the securities so withdrawn; and the said trustee or trustees for the time being shall, in the event of such sale or sales, exchange or exchanges being made, and from time to time, on the request of said railroad company, deliver or transfer to said railroad company or its assignee or assignees such number of the securities so sold or exchanged as aforesaid as shall be requested and indicated by the said railroad company: provided, however, that the entire proceeds realized from such sale or sales shall, at the option of said railroad company, be appropriated either to the lifting and tendering to the trustee for cancelation of bonds secured by this trust to an equivalent amount at par, or to the purchase and deposit with the trustee, subject to the terms of this trust, of other securities equal in cash value to the proceeds of those which may have been sold or delivered: and provided, further, that it shall be the duty of the trustee to require, upon the best information that can be obtained, that the value of the securities substituted shall be fully equal to that of the securities then so withdrawn from the trust.

5. The said railroad company further covenants, that for the

purpose of retiring said bonds a sinking fund shall be provided as set forth in this present indenture, on the first days of — and —, in the year 19—, and semiannually thereafter, equal to one-half of one per centum upon all the bonds hereby secured, which shall have been issued before the periods when such sinking fund becomes due respectively, and also the semiannual interest upon such bonds as shall have before such days respectively been purchased with said sinking fund. If, in any semiannual period, bonds at their par value and accrued interest or less be not offered for sale to an amount equal to the sinking fund thus provided, the whole of said fund for that period, if none be offered, or such amount of it as cannot be used in purchasing such bonds as may be offered, by reason of their not being offered at or under par and accrued interest, shall be paid into the treasury of the said company, and shall not be required to be added to the amount to be paid in any subsequent half year; but interest upon the amount of bonds then and previously purchased under the operations of this sinking fund at the rate of four and one-half per cent. per annum shall be held by the railroad company, and added to the said one-half of one per cent. at the next semiannual period, with like effect as if the amount had been invested by the trustee in the purchase of said bonds.

The said trustee will, by notice published once a week in one daily newspaper in the cities of — and — for four weeks prior to the first days of — and — of each year after 19—, advertise the number of bonds to be purchased as aforesaid. Sealed proposals for the sale of such bonds will be received at the office of said trustee in the city of — on or before the day prior to the time of making such purchase, and bonds offered at the lowest price will be accepted and paid for. Should bonds of different holders be offered at the same price, the number of bonds taken from each shall be on a pro rata basis, as nearly as practicable, in proportion to the whole number of bonds offered. Bonds when so purchased shall be immediately canceled by the said trustee in the presence of a notary public. A certificate by such notary, under his official seal, of such cancelation, shall be executed in duplicate, and a copy thereof given to each

party hereto, which certificate shall at all times thereafter be conclusive evidence of the payment and cancelation of the bonds that shall be enumerated in said certificate. It is further understood that should the issue of any portion of the bonds authorized to be issued hereunder and secured hereby be withheld for a time, the said railroad company shall from time to time cancel, or cause to be canceled, a proportion of those so withheld equal to those of the then outstanding issue canceled and retired by the operation of the sinking fund during such period: provided, that such canceled bonds shall be considered and taken from time to time as having been redeemed by the said railroad company within the meaning of the seventh article of this deed.

6. Until default shall be made in the payment of interest, principal or sinking fund, as hereinbefore provided, the said trustee, or the trustees or trustee for the time being, shall permit and suffer the railroad company to retain all the authority, powers and privileges belonging or incident to the ownership of the securities hereby pledged, agreed to be pledged, or hereafter substituted for those pledged, not inconsistent with the rights of the said trustee as herein expressed; and the said trustee or trustees for the time being shall and will execute and deliver to the said railroad company, or to such person or persons as may be designated by its president and board of directors, such powers and authorities, from time to time, as may be necessary or expedient for carrying into full effect the powers hereby retained and reserved by the said railroad company. The said trustee or trustees for the time being, however, shall collect the accruing interest and dividends upon said securities deposited as aforesaid, remaining in their hands from time to time, together with the principal and interest of any of the pledged securities maturing or retired by the sinking fund attached thereto, and apply such portion thereof as may be necessary to the payment of the interest upon the outstanding bonds, and to provide the sinking fund, under the terms of article fifth hereof, paying over to the said railroad company on the first day of —, 19—, and semi-annually thereafter, the excess beyond the amount necessary to pay the interest and to meet the sinking fund, as aforesaid, during

the preceding half-year, as also any balance of said sinking fund which shall not have been applied to the purchase of bonds offered under the terms of said sinking fund: provided, however, that if the amount of pledged securities maturing and retired under their own respective sinking funds shall reduce the collateral below the amount herein contemplated to remain on deposit at any time, the said railroad company shall make up such deficiency by the deposit of other securities approved by the trustee, as aforesaid: and provided, further, that should the trustee or trustees for the time being not realize from the sources mentioned hereinbefore sufficient funds upon any day fixed for the payment of interest, or sinking fund, to pay the same, the railroad company shall at once pay over to the trustee an amount adequate to meet such deficiency.

7. As often as said bonds of the said railroad company to the amount of five hundred thousand dollars (\$500,000) shall have been redeemed, in pursuance of the operation of the provisions of this agreement, or be procured and tendered to the trustee for cancelation by the said railroad company, the said trustee or trustees for the time being shall and will, upon demand of the said railroad company, or its president, retransfer to the said railroad company such proportionate part of the securities held by them under this deed of trust as the amount of bonds then canceled bears to the total number of bonds hereby secured: provided, however, that in computing such proportion, the then market value of the said securities shall be taken into account, if the said market value be greater than the appraised value thereof, but if the said market value be less than the appraised value thereof, then the said appraised value shall govern. And if said railroad company shall at any time present to said trustee the remaining outstanding issue of said bonds, secured as aforesaid, the said trustee shall and will thereupon receive and cancel the said bonds, or at the option of said railroad company, destroy the same, and shall and will account for all moneys that may be in their hands as such trustee; and in case there shall be due to the said trustee or trustees any sum of money, the said trustee or trustees will, upon its payment, retransfer to the said railroad company, or

to any person or persons designated by it, all the remaining securities held for the purpose of this trust.

8. In the event of the resignation, neglect, refusal or incapacity to act of the said trustee, or any successor in the trust, then a new trustee or trustees to fill any vacancy so caused shall be appointed by a court of competent jurisdiction upon the application of not less than one-fourth of the holders in value of outstanding bonds, and such trustee or trustees shall have the same powers, and hold upon the same trust, and be subject to all the terms of this indenture. And such nomination and appointment may be made successively from time to time as often during the continuance of this trust as occasion may arise.

9. It is hereby further covenanted and agreed as aforesaid, and this trust is accepted upon the express condition, that neither the said trustee nor any successors in the trust shall incur any responsibility or liability whatever, by reason of permitting and allowing the said railroad company to retain and reserve the power and authorities hereinbefore provided for in regard to the securities that may, under the terms hereof, become subject hereto; nor shall the said trustee, or any successor in the trust, be in any way responsible for any other matter or thing whatever, except the negligent, wilful and intentional breaches by such trustee of the trust herein expressed and contained; and the said trustee, or any successor in the trust, shall not at any time be bound or required to undertake any proceeding at law or in equity, or otherwise, for the protection of the bondholders, involving expenditures of or liability for the payment of money, unless, if the trustee shall see fit to require it, adequate indemnity against such liability or outlay be furnished it by the bondholders asking of it such action or proceeding.

10. The said railroad company shall, from time to time, execute any other and further instruments or assurances necessary or requisite to carry out the purposes hereof.

11. The said trustee and its successors shall receive annually from the said railroad company, in full for all services to be rendered, or procured to be rendered, in discharge of the duties of this trust, the sum of — dollars.

12. If the said principal and interest upon the said bonds issued by the railroad company shall be paid to the holders thereof, when and as the said principal and interest shall become due, according to the tenor and effect of the said bonds and in accordance with the provisions of this agreement, then the said trustee or trustees, upon the delivery thereof to them, shall cancel or destroy the said bonds, and thereupon all the securities hereby pledged or agreed to be pledged, or substituted in lieu thereof, under the provisions hereinbefore written, to said trustee, shall at once be retransferred to the said railroad company, or to any person or persons designated by the said railroad company, and upon such retransfer the said trustee shall be thenceforth discharged from further duties under this trust.

In witness whereof, the parties hereto have caused their corporate seals to be hereunto affixed, duly attested, the day and year first above written. The ——— Railroad Company. (Seal.) By authority of its Board of Directors, ———, President. Attest: ———, Secretary. The ——— Trust Company of ——— (Seal). By ———, President. Attest: ———, Actuary.

1. This instrument, not being a chattel mortgage, but a pledge of securities by delivery, need not be recorded.

2. The fifth provision is to be included only in case a sinking fund is contemplated.

3. See also ante, vol. 1, ch. 19; vol. 4, ch. 70.

#### 6142. Defeasance on receiving assignment of collateral security.

This agreement, made this ——— day of ———, 19—, between ——— of ———, first party, and ——— of ———, second party.

Whereas the first party is indebted to the second party in the sum of ——— dollars, and has assigned and transferred to the said second party, by a written assignment, a certain mortgage executed by ——— of ———, upon certain premises situated in ———, and a certain bond executed by said ———, which bond and mortgage are dated the ——— day of ———, 19—, and are conditioned for the payment of the sum of ——— dollars on the ——— day of ———, 19—, with interest thereon from the date of said bond and mortgage at the rate of ——— per cent. per annum, to be paid semiannually; and said assignment of said bond and mortgage, though absolute in terms, is intended to be, and in fact is, re-

ceived by said second party as collateral security for the payment of the amount so due, and any other sum which may become due thereon.

Now, therefore, in consideration of the premises, said second party hereby binds himself, his heirs, executors and administrators well and faithfully to account to said first party and to pay over to him and them all money which may be received or collected by said second party, his executors, administrators or assigns, from said bond and mortgage, over and above the amount so due from the first party, with interest thereon from date. Whenever the amount so due to said second party, with interest thereon, shall have been fully paid by said first party, said second party will reassign the above-described bond and mortgage to him, his executors, administrators or assigns, provided said bond and mortgage shall not have been paid in full or otherwise satisfied or foreclosed.

It is expressly understood and agreed that nothing in this agreement shall prevent said second party from prosecuting said bond or from foreclosing said mortgage for the purpose of enforcing a payment of money secured thereby in case of any default in the payment thereof or in the performance of any of its conditions, according to the terms thereof.

In witness, etc.

## POWER OF ATTORNEY.

### GENERAL CLAUSES.

#### 6145. Commencement.

(1) Know all men by these presents that I, — of —, do hereby appoint — of — my attorney, for me and in my name, etc.

(2) Know all men by these presents that we, —, — and — of —, carrying on business in partnership together as —, under the style or firm of — & Co., do and each of us doth hereby appoint — of — and — of —, jointly and each of them severally, the attorneys and attorney of us and of each of us and of our said firm of — & Co., in the names or name and on behalf of us and each of us and our said firm, etc.

1. The attorney should exercise his power in the name of his principal, signing his principal's name instead of his own. The power of attorney, if it be intended to authorize the conveyance or demise of any interest in real estate, should be under seal, and should be acknowledged and recorded in accordance with the laws of the place where the instrument is to be used.

2. See ante, vol. 1, § 452.

3. See also, various state statutes as to seal, witnesses, acknowledgments, etc., and as to married women's powers of attorney.

4. See also, ante, vol. 4, §§ 3892, 3893.

#### 6146. To receive debts and other personal property.

To demand, sue for and receive all debts, moneys, securities for money, goods, chattels, legacies or other personal property to which I am now or may hereafter become entitled, or which are now or may become due, owing or payable to me from any person or persons whomsoever, and in my name to give effectual receipts and discharges for the same.

#### 6147. To receive particular sum of money.

To receive from — of — the sum of — dollars, being the price agreed to be paid by him to me for a certain lot of land, situate, etc., and any interest that may be due thereon, and to give an effectual receipt and discharge for the same.



**6148. To execute and deliver particular deed.**

In my name, and as my act and deed, to sign, seal, acknowledge and deliver a certain deed, prepared for execution, and bearing date on or about the — day of —, intended to convey to — of — a certain lot of land, situate, etc., for the consideration of — dollars, and for me to receive said purchase-money.

1. See ante vol. 4, § 3893.

**6149. To mortgage property.**

To borrow from time to time such sums of money and upon such terms as the said attorney may think expedient for or in relation to any of the purposes or objects aforesaid, upon the security of any of my property, whether real or personal, or otherwise, and for such purposes to give and execute and acknowledge mortgages with such powers and provisions as he may think proper, as also such notes or bonds as it is necessary or proper to use therewith.

1. This, by proper recital, may be limited to particular property for a definite amount to a named mortgagee.

**6150. To sign or indorse bills or notes.**

And to make, draw, sign, accept or indorse in my name any bills of exchange or promissory notes in which I shall be interested or concerned, or which shall be requisite in or about my business.

1. See ante, vol. 4, § 2838.

**6151. To execute leases generally.**

In my name, and as my act and deed, to sign, seal, acknowledge and deliver all such leases and agreements as shall be requisite, or as my said attorney shall deem necessary or proper, in the care and management of my estate situate at —; and to receive and collect all the rents that may be payable to me or to said estate, and in my name to sign effectual receipts for the same.

**6152. To purchase or lease for business.**

In my name, and on my behalf, from time to time to purchase, take on lease, or otherwise acquire and hold all such houses, buildings, lands, chattels and effects in — aforesaid, as the said

attorney shall think necessary or expedient for managing and carrying on my business in said town.

1. See ante, vol. 4, § 2847.

**6153. To manage real estate.**

To manage or superintend all the estates of which I am or shall become possessed in the town of —, and state of —, and to cut timber and mine coal upon said estate, and to erect, pull down and repair houses or other buildings, or machinery, and to make roads on or otherwise improve any of the premises, and to insure the buildings and other property against damage or loss by fire.

**6154. To prosecute and defend suits.**

To commence, prosecute or enforce, or to defend, answer or oppose, all actions or other legal proceedings touching any of the matters aforesaid, or any other matters in which I am or may hereafter be interested or concerned; and also, if it shall seem best, to compromise, refer to arbitration or submit to judgment in any such action or proceeding.

**6155. To compromise claims.**

To adjust, settle, compromise or submit to arbitration any accounts, debts, claims and demands, disputes and matters, touching any of the matters aforesaid, or any other matters which are now subsisting or may hereafter arise between me and any other person or persons, or between my said attorney or any other person or persons.

**6156. To compromise or extend time of payment of debts.**

To compound and accept part in lieu of and in satisfaction for the whole of, or compromise any debt or sum of money now or hereafter owing or payable to me, or any other claim or demand which I have or may have against any person or persons; or grant an extension of time for the payment or satisfaction thereof, upon such terms as may be deemed proper, either with or without taking security for the same, or otherwise to act with respect thereto as my said attorney may think expedient.

**6157. To employ agents or servants.**

To appoint and employ any agents, servants or other persons, at such salary or for such compensation as my said attorney may think proper, and the same from time to time to dismiss or discharge, and any others to appoint or employ in their stead.

**6158. To collect rent of particular tenant, and to enter on default.**

For me, and in my name, to receive of and from —— of ——, on the —— day of —— next, the sum of —— dollars, the amount of one quarter's rent, which will then become due and payable to me from the said tenant, for and in respect of a dwelling-house, lands and premises, with their appurtenances, and which by a certain indenture of lease, bearing date on or about the —— day of ——, were demised by me to the said tenant for the term of —— years, which term is still unexpired; and in default of payment I give my said attorney full power and authority into and upon the said dwelling-house, lands and premises, to enter, and for me, and in my name, stead and place, to take possession thereof, to the intent that the said indenture of lease and the term thereby granted may become void, according to a certain proviso therein contained; and generally to execute and perform all things requisite or necessary to be done in or about the premises.

1. See ante, vol. 1, ch. 15.

**6159. To collect rents and eject tenants.**

And also to demand, sue for, receive and give effectual discharges, for all the rents and profits now due, or which shall become due in respect of the said premises; and to take and use all lawful proceedings and means for recovering the said rents and profits, and for ejecting defaulting tenants and occupants from all or any of the said premises, and determining the tenancy or occupation thereof, and for obtaining, recovering and retaining possession of all or any of the premises held or occupied by such defaulters.

**6160. To receive distributive share of intestate's estate.**

(After recital of intestate's death and appointer's interest.)  
For me, and in my name, to ask, demand, sue for, recover and receive of and from the administrator or administrators of my said deceased father all of my distributive share of my said deceased father's personal estate and effects, to which I am by law or otherwise entitled as one of his next of kin, under the statutes for the distribution of the personal estate of intestates; and upon receipt thereof for me, and in my name, to give good and effectual releases and discharges to the administrator or administrators of my said deceased father. And also for me, and in my name, and to my use, to settle and adjust with the said administrator or administrators any accounts, agreement or composition in, about or concerning my said distributive share or other matter or thing in relation thereto. And all and whatsoever my said attorney shall lawfully do or cause to be done in or about the premises I do hereby ratify and confirm.

**6161. To vote at meetings of corporation.**

To vote at the meetings of any company or companies, and otherwise to act as my proxy or representative, in respect of any shares now held, or which may hereafter be acquired, by me therein, and for that purpose to sign and execute any proxies or other instruments in my name and on my behalf.

**6162. To sell shares and securities.**

From time to time to sell and dispose of as my said attorney shall think expedient, either by public auction or private sale, any shares of stock I now hold, or may hereafter hold, in any business corporation, or any bonds or securities of the United States, of any state or municipal corporation or private company, and to receive the consideration money for the sale thereof, and for me and in my name to execute such transfers or assignments as shall be necessary to assign my said shares, bonds or securities to the purchaser or purchasers thereof.

1. See ante, vol. 4, § 50.

**6163. To satisfy mortgage.**

For me and in my name to receive the principal and interest

due on a certain bond secured by a mortgage given by —— of —— to me, dated ——, 19——, and recorded in the office for recording deeds in and for the county of ——, in mortgage book ——, page ——, to secure the payment of the sum of —— dollars, with interest, as therein expressed, upon all that certain parcel of land situate, etc.; and on receipt of said principal, interest and costs, to release the said mortgage by deed, or to appear for me and in my name in the aforesaid office, and there to acknowledge and enter satisfaction on the margin of the record of said mortgage; and also for me and in my name to make the necessary transfer of any policy or policies of insurance upon the mortgaged premises which may then stand in my name; giving and granting unto my said attorney full power and authority to do and perform all lawful acts requisite for effecting the premises; hereby ratifying and confirming all that the said attorney, or substitute or substitutes, shall do therein by virtue of these presents.

In witness, etc.

**6164. To receive dividends.**

To receive the dividends which are now due, or which shall hereafter become due and payable, according to law, on all the stock standing in my name in the following-named corporations, ——, with the power also to make and substitute any attorney or attorneys under him for that purpose, and to do all lawful acts requisite for effecting the premises; hereby ratifying and confirming all that my said attorney or his substitutes shall lawfully do by virtue hereof.

In witness whereof, etc.

**6165. To sell goods as mercantile agent.**

To sell all or any part of such goods, wares, merchandise and stock in trade as now or at any time hereafter I may have and possess at ——, upon such terms, and in such amounts, and at such times, as my said attorney may deem best; my said attorney keeping full and accurate accounts of the goods now on hand, and of such as he may hereafter receive, and of all sales thereof; giving unto my said attorney full power to make sales by him-

self or by his agents and servants, and generally to do all lawful acts as fully as I myself might do if I were personally present.

**6166. To deposit money and draw checks in principal's name.**

Upon receipt of any moneys which shall be paid to the said attorney by virtue of the premises, to pay or deposit the same in my name, or otherwise, with any banker, broker or the agent, to draw out such moneys from time to time, and to apply the same for any of the purposes aforesaid, or from time to time to invest the same at the discretion of said attorney, and from time to time to sell, vary and dispose of such investments, and to apply the purchase-money for any of the purposes aforesaid.

**6167. To stop goods in transitu.**

To all to whom these presents may come I, — of —, send greeting. Whereas, I have lately consigned to the firm of — & Co., at —, — cases of goods marked with the letters and figures and carried by the ships specified in the schedule hereunto annexed, which goods are supposed to be still on their passage to the said firm; and whereas said firm has been declared bankrupt, and in consequence of such bankruptcy I desire that such of said goods as are not in control of the said firm of — & Co. should be taken possession of and sold on my account before they come into their possession or under their control:

Now these presents witness that I, the said —, do hereby appoint —, — and —, of — aforesaid, merchants and copartners carrying on business under the firm of —, — & Co., or any one or more of them, to be my attorneys and attorney to ask, demand, sue for, recover and take possession of said goods specified in the said schedule, and all other goods whatsoever which have been consigned by me to the said bankrupt firm, and which have not come into the possession of said firm; and on delivery of any part thereof to give and execute receipts and other discharges therefor; and on nondelivery of any part thereof, to commence and prosecute any action, suit or other proceedings for recovering and compelling the delivery thereof; and also to sell and dispose of such of the said goods as shall come into his or their possession to any person or persons upon such terms as my

said attorneys or attorney shall think proper; and to remit all moneys received by the means aforesaid to me, or to dispose of the same in such other manner as I shall from time to time direct; and for all or any of the purposes aforesaid to use my name, and generally to do anything whatsoever relating to the premises as fully and effectually as I might or could do if personally present; and whatsoever the said attorneys, or any one or more of them, shall do or cause to be done in or about the premises, by virtue of these presents, I hereby covenant and agree with the said attorneys, and each of them to, and do hereby, ratify and confirm.

In witness, etc.

(Schedule above referred to.)

1. See ante, vol. 4, ch. 60.

#### 6168. To receive legacy.

Whereas A, deceased, late of —, did by his last will and testament bequeath unto B of —, state of —, a legacy to be paid to B of —, of which C of —, state of —, and D of —, state of —, are joint executors as is shown by said will.

Now, I, B, have made, constituted and appointed, and hereby make, constitute and appoint E of —, state of —, my attorney to demand and receive for me and in my stead from the said C and D, executors as aforesaid, the legacy bequeathed to me by said A, as aforesaid, and that upon receipt of the same by my said attorney, he shall execute and deliver and discharge for the same; and hereby ratify and confirm whatsoever my said attorney may do in the matter.

In witness whereof, etc.

#### 6169. To confess judgment.

Know all men by these presents that —, of the city of —, state of —, is held and firmly bound unto —, of city of —, state of —, in the sum of — dollars to be well and truly paid unto him, his assigns and personal representatives, for which payment I hereby bind myself, my heirs and personal representatives, by these presents.

Witness my hand and seal this — day of —, 19—.

To —, or any other attorney in the state of —:

I hereby authorize you to appear for me in any court of competent jurisdiction in the state of —, at the suit of —, and confess judgment unto him against me for the sum of — dollars, the same being the amount of the foregoing bond, in addition to the costs of said suit, with full power at all times after entry of said judgment to authorize the plaintiff therein to issue execution for any amount that remains due thereon, and for such purposes these presents shall be your warrant.

Witness my hand and seal, this — day of —, 19—.

————— (Seal.)

Signed and delivered in the presence of: ———.

**6170. Provision validating acts of attorney done after death of principal before knowledge thereof has reached attorney.**

And I hereby declare that in case of my death this power of attorney shall, as to all matters and things which may after my death be done by my said attorneys, or any or either of them, by virtue, or under color, or in pursuance hereof, be as binding upon my executors and administrators as the same would have been upon me if living, unless my said attorneys or attorney had, previously to the doing of any such matters or things, received reliable intelligence of my death, so as effectually to apprise them that their authority hereunder had determined.

1. Inasmuch as a power of attorney is always revoked by the death of the person who gave it, where the attorney is to act in a foreign country, or at a distance from his principal, it may be desirable to provide for validating his acts after the death of the principal until the attorney shall have received information of his death.

**6171. To act generally.**

And generally to act as my attorney or agent at — afore-said, in relation to the premises, and all other matters in which I may be interested or concerned, and on my behalf to execute all such instruments, and to do all such acts and things, as fully and effectually in all respects as I myself could do if personally present.

**6172. Ratification of attorney's acts.**

And I hereby for myself, my heirs, executors, and administra-



tors ratify and confirm, and agree to ratify and confirm, whatsoever my said attorney shall do by virtue of these presents.

1. See ante, vol. 4, § 2934.

#### 6173. Testimonium clause.

In witness whereof I have hereunto set my hand and seal this — day of —, 19—.

#### 6174. To appoint substitutes.

To substitute and appoint from time to time an attorney or attorneys under him, the said attorney, with the same or more limited powers, and such substitute or substitutes at pleasure to remove, and another or others to appoint.

#### 6175. Provision for substitute in certain contingencies.

And in case the said attorney shall die, or become incapable of acting as my attorney, I hereby appoint — of — to be my attorney in the place of the said attorney, with power to exercise all or any of the powers and authorities hereinbefore conferred on the said attorney, in as full and ample a manner in all respects as if the name of the said substitute had been hereinbefore throughout inserted instead of that of the said attorney.

#### 6176. Appointment of substitutes by virtue of authority in power of attorney.

To all to whom these presents shall come I, — of —, send greeting. Whereas —, of —, duly made and executed under his hand and seal a power of attorney, dated —, 19—, whereby he appointed me his attorney, for him and in his name to do the acts therein specified, with power from time to time to substitute any person or persons to act under me or in my place as attorney or attorneys in all or any of the matters aforesaid, and from time to time every such substitution and appointment at pleasure to revoke:

Now these presents witness that I, the said —, by virtue and in execution of the authority in that behalf contained in the said power of attorney, and of all other authority me hereunto enabling, do hereby appoint — and — of —, and each of them, to be the attorneys and attorney, jointly and separately,

of my said principal —, for him and in his name, or in my name, to execute and perform all and every the matters and things mentioned and contained in the said power of attorney to me, in the same manner, and as fully and effectually, as he my said principal, or as I might or could have done if personally present, and as they the said attorneys, or either of them, might or could have done if they had been appointed the attorneys jointly and severally of my said principal, in and by the said power of attorney, instead of me, I, the said —, hereby confirming and agreeing to confirm whatsoever the said attorneys jointly, or either of them separately, shall do or cause to be done in and about the premises by virtue hereof.

In witness, etc.

**6177. Revocation of power and appointment of new attorney.**

Know all men by these presents that whereas by a power of attorney, dated, etc., under my hand and seal, I appointed — of — to be my attorney, with the powers and authorities therein mentioned; and whereas I desire to revoke the powers given to the said — as aforesaid, and to appoint — of — to be my attorney in place of said —:

Now, therefore, I do hereby revoke and make void all and singular the powers and authorities by the said recited power of attorney given to or conferred upon the said —: provided always that the revocation herein contained shall not prejudice or affect anything lawfully done or caused to be done by the said —, or any substitute acting under him, in the exercise of any such powers or authorities as aforesaid in the interval between this revocation and the time of the same becoming known to him or his substitute. And I do hereby ratify and confirm anything lawfully done or caused to be done by the said —, or any substitute acting under him, in the exercise of any such powers or authorities, including anything so done or caused to be done in such interval as aforesaid.

And I do by these presents appoint — of — my attorney, in my name to exercise and execute all or any of the powers or authorities by the said recited power of attorney given or conferred to or upon the said —, in as full and ample a manner,

to all intents and purposes, as if the name of the said — had been inserted in said recited power of attorney in the place of said — therein named. (Add ratification clause.)

In witness, etc.

**6178. To apply for mining patent.**

— and —, both of the county of —, state of —, hereby appoint and constitute — of —, state of —, to be our lawful agent and attorney in fact for us and in our names to make application to the United States for the entry and purchase of the — lode mining claims situated upon government lands in the mining district of the county of —, state of —, owned by us; and hereby empower said attorney to have the same surveyed, and to take all steps necessary to procure a United States patent for said claims, the same to be granted to us; and said attorney is hereby empowered to do any and all acts in the premises proper and necessary to be done, the same as we would do if we were acting in person.

Witness our hands and seals, this the — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(Here follows acknowledgment.)

**PROMISSORY NOTES.**

See **BILLS AND NOTES.**

## PROTESTS.

**6180. Protest by master for loss or damage to vessel.**

To all to whom these presents shall come, I, —, a notary public in and for the commonwealth of —, duly commissioned and sworn, and residing in the city of —, send greeting. Know ye, that on the — day of —, in the year —, before me appeared —, master of the ship called the —, and noted in due form of law with me his protest, for the uses and purposes hereinafter mentioned. And now, on the date hereof, before me, the said notary, at — aforesaid, again comes the said —, and requires me to extend his protest; and, together with the said —, also come —, — and —, seamen belonging to the aforesaid ship, all of whom, being by me severally duly sworn according to law, voluntarily, freely and solemnly do declare and depose as follows, that is to say: That they, the said appearers, in their several capacities aforesaid, sailed and departed in and with the said ship —, from —, on the — day of —, 19—, having on board the said ship a cargo of —, and bound for the port of —; that the said ship was then stout, stanch and strong, had her cargo properly stowed and secured, was well and sufficiently victualed, appareled and appointed, and was in every respect fit for sea and the voyage she was about to undertake; that after the said ship had been at sea — days, namely, on the — day of January, 19— (here detail all the circumstances attending the loss of or injury to the vessel or cargo). And the said master further says that, as all the damage and injury which already has or may hereafter appear to have happened or accrued to the said ship or her cargo has been occasioned solely by the circumstances hereinbefore stated, and cannot or ought not to be attributed to any insufficiency of the said ship, or to any omission, neglect or mismanagement on the part of the said master, or his officers or crew, he, the said master, now desires to protest, requiring an act thereof from me, the said notary public, to avail him when and where needful and neces-

sary; and, in testimony of the truth of the premises, the said appearers have hereunto respectively set their hands.

(Signatures.)

Whereupon I, the said notary public, at the request aforesaid, do by these presents publicly and solemnly protest against winds and weather and seas, and against all and every accident, matter and thing had and met with as aforesaid, whereby or by means whereof the said ship or her cargo already has or hereafter shall appear to have suffered or sustained damage or injury, for all losses, costs, charges, expenses, damages and injury which the said ship, or the owner or owners of the said ship, or the owners, freighters or shippers of her said cargo, or any other person or persons interested or concerned in either, may hereafter or already have paid, sustained, incurred or been put unto, by or on account of the premises, or for which the insurer or insurers of the said ship or her cargo is, or are respectively, liable to pay or make contribution or average, according to custom, or their respective contracts or obligations; and that no part of such losses and expenses, already incurred or hereafter to be incurred, do fall on the said vessel or her owners, or on him, the said —, his officers or crew.

Thus done and protested by me, the said notary public, at the city of —, the day and year first aforesaid.

#### 6181. Protest by master of vessel for demurrage under charter party.

To all people to whom these presents shall come, I, —, a notary public in and for the state of —, duly commissioned and sworn, dwelling in the city of —, send greeting. Know ye, that on the — day of —, 19—, personally appeared before me —, master of the ship called the —, belonging to the port of —, in the state of —, who, having been by me duly sworn, did depose as follows: that he, this appearer, as such master as aforesaid, did, on or about the — day of — last, let the said ship to freight to — of —, and a charter party, for a voyage from — to —, and from thence back to —, was entered into on the said — day of — last, between this appearer of the one part, and the said — of the other part, for the said

voyage, whereby it was stipulated (state the number of days allowed for unloading and reloading, and the amount per day to be paid for demurrage), that this appearer, pursuant to the charter party, did receive on board of the vessel, at — aforesaid, a cargo of lawful goods, provided and shipped by the agents of the said charterer, and from thence proceeded therewith, on board of the said vessel, direct to — aforesaid, where said vessel arrived on the — day of —, 19—; and on the next day, when the said vessel had been reported, and got into a proper berth for discharging, this appearer gave to — & Co., the agents at — of the said charterer, to whom as agents the cargo was consigned, notice that this appearer was ready to deliver the said cargo of goods; and that the said charterer's agents caused the discharge of the said cargo to be commenced, and they received and took the same from the said vessel, and then proceeded to put on board the said vessel another cargo of goods for her voyage back to — aforesaid, but that the said charterer's agents did not complete the loading thereof until the — day of — following, being — days beyond the time hereinbefore mentioned and allowed in and by the said charter party to the said charterer or his agents for discharging and reloading the said vessel at — as aforesaid, whereby the said charterer hath become liable to pay demurrage for such delay or detention, pursuant to the said charter party, for — days, at the rate of — dollars per day, and which sum, or any part thereof, the said agents of the said charterer have refused to pay. Whereof the said appearer, —, on behalf of the owners of the said vessel and on behalf of himself as master, doth protest; and I, the said notary, at his request, do also protest against the said charterer, —, and against his agents, the said — & Co., and against all and every other person or persons whomsoever, responsible or liable, or whom these presents do or may concern, holding him and them responsible or liable for the breach of the said charter party, and for all demurrage, damage, injury, loss, wages, costs and expenses incurred, owing or sustained, or to be incurred or

sustained, by reason of the said breach, delay, detention or other premises.

Thus done and protested, etc.

1. For charter party form, see ante, under Carriers' Contracts.

#### 6182. Form of protest of commercial paper.

UNITED STATES OF AMERICA,	}	ss.
STATE OF ———,		
COUNTY OF ———,		
CITY OF ———,		

By this public instrument of protest, be it known: That on this ——— day of ———, 19—, I, a notary public in and for the county and state aforesaid by lawful authority duly commissioned and sworn, residing in ———, in the county and state aforesaid, at the request of ———, holder of the original ———, did present the original ———, which is hereunto annexed, to ———, and did demand ———. The said ——— did refuse to ——— the same (here insert reason, if any, why payment or acceptance was refused).

Whereupon I did protest, and by these presents do publicly and solemnly protest as well against the drawer and indorsers of the said ——— as against all others whom it doth or may concern for exchange, re-exchange and all costs, charges, damages and interest heretofore incurred or to be hereafter incurred for want of the ——— of the same; and I do hereby certify that on the ——— day of ———, 19—, I did give due and written notice, signed by me, of the presentment and protest of the foregoing ——— to the respective indorsers of the said instrument, and informing ——— that ——— was held liable for the payment of said ———; and on the same day, in the evening, I deposited the same in the post-office at ———, contained in a securely sealed postpaid wrapper, duly directed and subscribed to said ——— as follows, to wit: to ———, the above-named places and addresses being the reputed place of residence and address of the persons to whom such notice was so addressed and the post-office nearest thereto.

Thus done and protested in the city of ——— in the county and state aforesaid, in the presence of ——— and ———, witnesses.

In testimony whereof, I have hereunto set my hand and affixed my official seal this — day of —, 19—.

————— (Seal.)

Notary Public.

My commission expires on the — day of —, 19—.

#### FEES

Protest —

Record —

Notices —

Registered Vol. —, page —.

Postage —

Total..\$—

1. See ante, vol. 4, ch. 89.

### 6183. Form of notice of protest.

STATE OF —,        }  
COUNTY OF —.    } ss.

—, 19—.

To —,  
—.

You will please take notice that a — for — dollars, dated —, payable —, after —, drawn by — in favor of — on —, accepted by —, indorsed by you and due — has been protested by me on this day for non— after having made legal demand for the same.

I hereby, at the request of —, the holder thereof, notify you that the said holder looks to you for payment, damages, interest and costs as indorser thereof.

Very respectfully,

—————,  
Notary Public.

My commission expires on the — day of —, 19—.

1. See ante, vol. 4, § 3477.

2. See also, 5393.



## PUBLISHERS' AND AUTHORS' CONTRACTS.

## 6185. Contract for sale of manuscript and copyright.

This agreement, made and entered into this — day of —, by and between —, author, party of the first part, and —, publisher, party of the second part,

Witnesseth, that said party of the first part, in consideration of the sum of — dollars, agrees to sell, and does sell, to the party of the second part the manuscript of a work entitled —, written and to be prepared for the press by him; and he, the said author, also agrees to examine and correct the proof-sheets thereof, as they shall be furnished to him from time to time during the printing or stereotyping thereof. The said second party and his personal representatives and assigns are to have the exclusive right to take out and own the copyright, and the renewals of the copyright thereof. And the said second party, for himself, his personal representatives and assigns, agrees to pay the said author in the manner following: — dollars on the signing of this contract, — dollars when the whole copy, including the index, shall be ready for the printer, and the balance when the proof sheets shall have all been corrected and returned to the printer; and also agrees to furnish to the said author — bound copies of his work within a reasonable time after the said author shall have completed his labors; and the whole of said proof-sheets to be furnished the said author within a reasonable time after the delivery of the manuscript.

And it is further agreed, that in case the said work shall fall short of pages of the size and style of the work known as —, exclusive of index and contents, then the said author is to receive, and the said publisher is to pay, a sum so much the less, in proportion to the actual number of pages; but in case said work shall contain more than — pages, the sum to be paid therefor is not to be increased.

In witness whereof, etc.

\_\_\_\_\_  
\_\_\_\_\_

1. See ante, vol. 2, § 1360; vol. 3, § 2319; vol. 5, § 4985.

**6186. Publisher's contract.**

Memorandum of agreement made this the — day of —, 19—, by and between — of —, state of —, party of the first part, and — of —, state of —, party of the second part, witnesseth:

That whereas the first party has in preparation for publication a work or manuscript entitled —: Now, therefore, it is hereby agreed by the parties hereto that the first party hereby gives to the second party the exclusive right to publish the same during the full term of the copyright hereafter to be obtained on said work by the second party, upon the following terms: The second party shall take out a copyright on said work in the name of the first party and deliver to him the certificate thereof, and receipt for volumes thereof required by law to be deposited with the librarian at congress, which copyright shall be held by second party subject to the terms of this contract.

The party of the second part further agrees to deliver to the first party — copies of said book free of cost to first party, and the second party agrees to publish said work in good style as soon as practicable after receiving the manuscript therefor, and in such manner as he shall deem most expedient, and agrees to keep the market fully supplied with such work.

The second party further agrees to render unto first party semiannually as soon as practicable after the — day of — and the — day of — in each year, an account of the number of copies of the work which he has sold during the six months preceding such day, and accompany the same with a certificate of the printer showing the number of volumes printed during such period, and shall pay to the first party at the same time a royalty of — per cent. on all volumes sold as aforesaid at the regular retail price.

If the second party should fail to perform any of the conditions of this agreement on their part to be performed, the right to publish the work shall revert to the first party who shall have the right to purchase the plates and engravings used in publishing the work, at their fair valuation.

In testimony whereof, etc.

1. See ante, vol. 2, § 1436.

**RELEASES.****6190. General release.**

Know all men by these presents, that I, — of —, do hereby remise, release and forever discharge — of —, his heirs, executors and administrators of and from all and all manner of actions, and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, which against the said — I, my heirs, executors, administrators or assigns, or any of them, ever had, now have or hereafter can, shall or may have, for or by reason of any cause, matter, or thing whatsoever, from the beginning of the world to the date hereof.

In witness whereof, I have hereunto set my hand and seal the — day of —, 19—.

1. See MORTGAGES, ante, 6001-6004.

2. See ante, vol. 2, §§ 1482, 1483, 1485; vol. 3, §§ 2056-2067.

**6191. Mutual release of debts and causes of action.**

Indenture made the — day of —, 19—, between — of —, of the one part, and — of —, of the other part. Whereas there have been divers dealings and transactions between the said — and —, with reference to their business and otherwise, and disputes and differences have arisen between them; and whereas the said — and — have agreed to settle all the said disputes and differences by the payment of a sum of — dollars by the said — to the said —, and by the execution of mutual releases in manner hereafter appearing:

Now this indenture witnesseth, that in pursuance of the said agreement, and in consideration of the sum of — dollars, upon the execution hereof paid by the said — to the said — (the receipt whereof the said — doth hereby acknowledge), and of the premises, each of them the said — and —, doth hereby release the other, his heirs, executors, administrators, estates and

effects, from all sums of money, accounts, actions, claims and demands up to the date and execution of these presents.

In witness, etc.

**6192. Mutual release of all claims between partnership firm and individual.**

This indenture, made on the — day of —, 19—, between — and —, all of —, merchants and copartners, of the one part, and — of —, of the other part, witnesseth, that the said copartners do, and each of them doth hereby, release the said —, his heirs, executors, administrators, assigns and his and their estate and effects; and the said — doth hereby release the said copartners, and each of them, and the heirs, executors, administrators and assigns, and estates and effects of them, and of each of them, from all sums of money, accounts, actions, proceedings, claims and demands whatsoever, for or by reason or in respect of any act, cause, matter or thing whatsoever, up to the day of the date of these presents.

In witness, etc.

**6193. Mutual release by three persons.**

This indenture, made this — day of —, 19—, between —, —, and —, witnesseth, that every one and every two of them, the said —, — and —, doth and do hereby release the others, and each of the others of them, their and his heirs, executors, administrators and assigns, and their and his estates and effects, from all sums of money, accounts, contracts, agreements, covenants, bonds, actions, proceedings, claims and demands whatsoever, which any one or any two of them, the said —, — and —, now hath or have against the others, or either of the others of them, for or by reason or in respect of any act, matter, cause or thing whatsoever, up to the day of the date of these presents.

In witness, etc.

**6194. Release from creditor to debtor on receiving sum of money in satisfaction of disputed claims.**

This indenture, made the — day of —, 19—, between — of —, first party, and — of —, second party: Where-

as the said first party has from time to time, during several years past, advanced various sums of money to or on the account of the said second party; and certain other dealings and transactions have taken place between them, by means whereof the said second party became indebted to the said first party in a considerable sum of money; and whereas the said first party has made certain claims and demands against the said second party, by reason of the transactions aforesaid, the validity of some part of which claims and demands is denied by the said second party, in consequence whereof disputes and differences have arisen between the said parties respecting the same; and whereas, for the purpose of terminating and adjusting such disputes and differences, it was lately agreed between the said parties that the said second party should pay to the said first party the sum of — dollars in full satisfaction and discharge of all claims and demands whatsoever, and that, on receiving the same, the said first party should execute to the said second party such release as is hereinafter contained:

Now this indenture witnesseth, that, in pursuance of the said agreement, and in consideration of the sum of — dollars now paid by the said second party to the said first party (the receipt of which sum said first party hereby acknowledges), said first party hereby releases the said second party, his heirs, executors and administrators from any and all manner of sums of money, debts, accounts, actions, proceedings, claims and demands whatsoever, which said first party now has, or which he, his heirs, executors or administrators, but for these presents, could, would or might, at any time or times hereafter, have, upon or against the said second party, his heirs, executors or administrators, for or by reason or on account of any matter, cause, or thing whatsoever, up to and inclusive of the date hereof.

In witness, etc.

1. See ante, vol. 3, §§ 2068-2079, 2081-2086.

#### 6195. Release of condition.

Know all men by these presents, that whereas we, — and —, both of —, in the county of —, as trustees under the will of —, late of said —, made and executed a certain deed

to — of —, dated the — day of —, 19—, and recorded with — deeds, book —, page —, and in said deed was expressed the following condition, namely: (recite condition.)

Now, therefore, we do declare that the said — has, in all respects, fully complied with the terms of said conditions, which we do hereby declare to be discharged, and our said conveyance to be of the same effect as if said condition had not been therein written; and for this purpose we do hereby remise, release and forever quitclaim unto the said —, his heirs and assigns the premises in said deed described.

In witness whereof we, the said — and —, trustees as aforesaid, hereunto set our hands and seals this — day of —, 19—.

#### 6196. General release to debtor under composition.

Whereas by indenture bearing date on or about the — day of — last, and made between —, debtor, of the one part, and us, the said several creditors, parties hereto, of the other part, after reciting that the said debtor was indebted to us, the said creditors, in the several sums set opposite to our respective names subscribed to the said recited indenture, and being unable to satisfy the same in full, but desirous to liquidate the same as far as he was able, he had proposed to pay us, his said creditors, within the space of — calendar months from the date thereof, the sum of — cents on the dollar, which composition we, the said creditors, had consented to accept in full satisfaction of our respective debts, it is witnessed that, pursuant to said agreement, the said debtor did thereby covenant with us, the said several creditors, that he, the said debtor, would, within the space of — calendar months from the date thereof, pay unto us, the said several creditors, the sum of — cents on the dollar upon the amount of our said respective debts;

And whereas we, the said several creditors, have respectively received the full amount of said composition on the several sums of money set opposite to our respective names at the foot of the said recited indenture, and also at the foot of these presents:

Now, therefore, for the considerations hereinbefore mentioned,

we, the said several creditors, parties hereto, do, and each and every of us who have hereunto set our hands and seals doth, by these presents, remise, release, exonerate and forever discharge the said debtor, his heirs, executors and administrators, and his and their lands and tenements, goods and chattels, of, from and against all debts, claims and demands whatsoever which we now have, ever had, or could claim or demand, from or against the said debtor; and also from and against all and all manner of action or actions, suit or suits, cause or causes of action or suit, which we now have, ever had or can or may have, against the said debtor, his heirs, executors or administrators, for or in respect of our said debts, or any cause, matter or thing relating thereto.

In witness, etc.

1. See COMPOSITION WITH CREDITORS, ante, 5587.
2. See ante, vol. 3, § 2080.

#### 6197. Release by owner of vessel to master.

Know all men by these presents, that we, —— and ——, owners of the ship ——, as well for and in consideration of the sum of —— dollars, to each of us in hand paid by ——, late master of said ship ——, at and before the sealing and delivery hereof, the receipt whereof we, and each of us, do hereby acknowledge, as of divers other good causes and valuable considerations, us and each of us, thereto specially moving, by these presents, for us and each of us, our and each of our heirs, executors and administrators, do remise, release, quitclaim and forever discharge the said ——, late master of the said ship ——, his heirs, executors and administrators of and from all actions, causes of action, debts, dues, duties, sums of money, covenants, agreements, damages, judgments, executions and demands whatsoever, in law or equity, which against the said ——, master of the said ship ——; we, or either of us, ever had, now have, or which our or either of our heirs, executors or administrators shall or may have, by reason of any matter, cause or thing whatsoever connected with, or in any wise appertaining to or affecting, the said ship ——, or her navigation, management or contracts, or any of her cargoes or freight, upon any voyage upon which she has ever

sailed or contracted to sail, from the beginning of the world to the day of the date of these presents.

In witness, etc.

1. Releases by seamen, see ante, vol. 3, § 2063.

#### 6198. Release of mechanics' liens.

Whereas we, the subscribers, have erected and furnished materials for erecting a certain building on the lot or piece of ground situate at the — corner of — and — streets, in the city of —, for — of —, claiming to be the owner thereof; and whereas we have agreed to release all liens which we, or any or either of us, have or might have on the said building and lot of land by reason of materials furnished, or work performed, for erecting the same:

Now these presents witness, that we, the subscribers, for and in consideration of the premises, and of the sum of one dollar, to each of us at or before the sealing and delivery hereof by the said — (owner) well and truly paid, the receipt whereof we do hereby acknowledge, by these presents do remise, release and forever quitclaim unto the said —, and to his heirs and assigns, all and all manner of liens, claims and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the said building and premises, for work done, or for materials furnished, for erecting and constructing the said building, or otherwise howsoever; so that he, the said —, his heirs and assigns, shall and may have, hold and enjoy the said building and premises, freed and discharged from all liens, claims and demands whatsoever, which we, or any or either of us, now have, or might or could have, on or against the same, if these presents had not been made.

In witness, etc.

1. See ante, vol. 3, § 2063.

#### 6199. Partial release of mortgage—Massachusetts form.

Know all men by these presents, that we, — and —, both of —, in the county of —, trustees under the will of —, late of said —, and mortgagees named in a certain mortgage given by — of said — to us as trustees aforesaid, dated the — day of —, 19—, and recorded with —



deeds, lib. —, fol. —, in consideration of one dollar and other good and sufficient consideration to us paid by said —, the receipt whereof is hereby acknowledged, do hereby remise, release and forever quitclaim unto the said — all the right, title and interest which we acquired under the aforesaid mortgage in or to that portion of the premises therein conveyed, which is described as follows, namely, a certain parcel, etc.

To have and to hold the same to the said — and his heirs and assigns, to his and their own use and behoof, forever.

But this release shall not in any way affect or impair our right to hold under the said mortgage and as security for the sum remaining due thereon, or to sell, under the power of sale in said mortgage contained, all the remainder of the premises therein conveyed and not hereby released.

In witness whereof, we hereunto set our hands and seals this — day of —, 19—.

Signed and sealed in presence of —.

1. See also, MORTGAGES, DISCHARGE OF, ante, 6001-6004.

#### 6200. Partial release of mortgage—Michigan form.

Indenture made the — day of —, 19—, between — of —, mortgagee, of the first part, and — of —, mortgagor, of the second part.

Whereas the said —, second party, by indenture of mortgage bearing date the — day of —, 19—, for the consideration therein mentioned, and to secure the payment of the money therein specified, did convey certain lands and tenements, of which the lands hereinafter described are part, unto said —, first party.

And whereas the said first party, at the request of the said second party, has agreed to give up and surrender the lands hereinafter described unto the said second party, and hold and retain the residue of the mortgaged lands as security for the money remaining due on said mortgage:

Now this indenture witnesseth, that the said first party, pursuant to said agreement, and in consideration of the sum of — dollars to him duly paid at or before the ensealing and delivery hereof, the receipt whereof is hereby acknowledged, hereby doth

grant, release, quitclaim and set over unto the said second party all that part of the said mortgaged lands bounded and described as follows, etc.; together with the hereditaments and appurtenances thereto belonging, and all the right, title and interest of the said first party of, in and to the same, to the intent that the lands hereby conveyed may be discharged from the said mortgage, and that the rest of the lands in the said mortgage specified may remain to the said first party, as heretofore: To have and to hold the lands and premises hereby released and conveyed to the said second party, his heirs and assigns, to his and their only proper use, benefit and behoof, forever, free, clear and discharged of and from all lien and claim, under and by virtue of the indenture of mortgage aforesaid.

In witness, etc.

**6201. Partial release of mortgage—Pennsylvania form.**

To all to whom these presents shall come, I, — of —, send greeting. Whereas — of —, by indenture of mortgage dated the — day of —, 19—, and recorded in the office for recording of deeds in and for the county of —, in mortgage book —, page —, granted and conveyed unto me, my heirs and assigns, the premises therein particularly described, to secure the payment of a certain debt or principal sum of — dollars lawful money, with interest, as therein mentioned; and whereas the said —, the mortgagor and present owner of the equity of redemption of said premises, requested me, the said —, to release the premises hereinafter described, being part of said mortgaged premises, from the lien and operation of the said mortgage:

Now, therefore, know ye that I, the said —, as well in consideration of the premises as of the sum of — dollars lawful money to me in hand paid by the said —, the mortgagor, at the time of the execution hereof, the receipt whereof is hereby acknowledged, have remised, released, quitclaimed, exonerated and discharged, and hereby do remise, release, quitclaim, exonerate and discharge unto the said —, his heirs and assigns all that parcel, etc., being part of the premises in said mortgage described. To hold the same, with the appurtenances, unto the said

—, his heirs and assigns, forever, freed, exonerated and discharged of and from the lien of said mortgage, and every part thereof. Provided always, nevertheless, that nothing herein contained shall in any wise affect, alter or diminish the lien or encumbrance of the aforesaid mortgage on the remaining part of said mortgaged premises, or the remedies at law for recovering thereout or against the said —, the mortgagor, his heirs, executors, administrators or assigns, the remainder of the principal sum with interest, secured by said mortgage.

In witness whereof, etc.

**6202. Release of mortgage or deed of trust—West Virginia form.**

I, A. B., hereby release a mortgage (or deed of trust) made by C. D. to me (or to E. F., my trustee, or to — and assigned to me), dated the — day of —, recorded in the office of the clerk of the county court of —, county, West Virginia, in deed book —, page —.

(To be signed) A. B.

Acknowledged before the subscriber, this — day of —.

(To be signed) G. H., justice (or clerk of the county court, notary public, etc., as the case may be).

1. Code 1906, § 3126.

**6203. Release of lien for purchase-money reserved.**

I, A. B., hereby release the right reserved to me in a conveyance executed by me (or by myself and wife) to C. D., dated the — day of —, etc. (as in the preceding form).

**6204. Release of judgment or decree.**

I, A. B., hereby release a judgment (or decree) in my favor (or in favor of J. K., which has been assigned to me; or in favor of J. K., for my use), against C. D., for (stating the amount), with interest and cost, rendered by (stating the court by which, or the justice by whom it was rendered, and the term or date at which it was rendered).

(To be signed and acknowledged as above.)

**6205. Release of possession by mortgagee without discharge.**

Whereas I, —, the mortgagee named in a certain mortgage deed, dated —, recorded —, given by —, on — lots of land in —, to secure — dollars, on the — day of — last past made an entry thereof on the mortgaged premises and took possession thereof for breach of condition of said mortgage and for purpose of foreclosing the same; and whereas —, owner of the equity of redemption of said land, has paid all expenses, the interest, and so much of the principal of said mortgage as is now due, and is in possession of the mortgaged premises, receiving the rents and profits thereof.

Now, I, —, the said mortgagee, do certify and acknowledge that I have relinquished to said — possession of the mortgaged premises, and that said entry has become void and of no effect, and is not to operate as a foreclosure of said mortgage; it being understood, however, that this acknowledgment is not to be construed as a discharge of said mortgage or as impairing my security for the balance of the mortgage debt, it being intended only as evidence for record that the possession for foreclosure under said entry is released.

Signed, sealed and acknowledged.

**6206. Release of guarantor from liability under his guaranty.**

Whereas — of —, by a guaranty in writing dated the — day of — and signed by him, became surety to us for the payment by — of — (debtor) for all goods to be supplied by us to said — (debtor) in the way of his trade or business during a period of — from the — day of —, but with a limitation of liability under his guaranty to the sum of — dollars:

And, whereas, relying on the said guaranty we have from time to time since the said — day of —, at the request of said —, supplied him with goods on credit in the way of his trade or business, and he is now indebted to us on account thereof in the sum of — dollars which he has not paid and professes to be unable to pay:

And, whereas, at the request of said — (surety) we have agreed to release him from all past, present and future liability

under his guaranty in consideration of his paying to us, previous to the execution of these presents, the sum of — dollars and have agreed thereupon to cancel said guaranty and surrender the same to him:

Now these presents witness that in pursuance of said agreement and in consideration of the payment of said sum, the receipt whereof is hereby acknowledged, we hereby jointly and severally release and discharge said — (surety), his executors and administrators from all liability to us under the said guaranty, and from all claims and demands for or in respect of said guaranty.

And we hereby agree to cancel said guaranty and surrender the same to him.

Witness our hands and seals this — day of —.

1. See ante, vol. 5, § 3973.

#### 6207. Release of trust.

Whereas, by deed dated the — day of —, 19—, made by and between, etc. (here recite the deed), in which deed —, first party, hereby declares that his name was used only in trust for the benefit of —, second party;

Now, I, —, first party, in discharge of said trust reposed in me, at the request of —, second party, the cestui que trust, hereby release, surrender, assign and set over unto —, second party, all the estate, right, title, interest and use which I, —, first party, have to and in said premises and hereby for myself, my heirs, assigns and personal representatives, release all claim, demand, title and interest in and to said premises, and from all actions, suits or demands which I, my heirs, assigns and personal representatives may have in and to the same.

In witness whereof, etc.

#### 6208. Release of estate from bequest.

Whereas, —, first party, of —, state of —, did by his last will and testament in writing, bearing date of — day of —, 19—, among other things give and bequeath to —, second party, the sum of — dollars, and did appoint — sole executor of said will.

Now, therefore, I, —, second party, acknowledge receipt from said executor of said — dollars, bequeathed to me as aforesaid and hereby release and discharge said executor from all dues and demands whatsoever under or by virtue of said will, or arising out of the estate of said —, first party.

In testimony whereof, etc.

**6209. Release of land from lien of judgment.**

In consideration of — dollars to me in hand paid, I do hereby release and discharge the lands and premises hereinafter described, from all claim, interest and lien which I may have by virtue of a certain judgment for — dollars damages and costs obtained by me against one — in the case of — v. —, on the day of —, 19—, and which judgment is recorded in judgment docket No. — on page —, of the judgment records in the clerk's office of the county of —, state of —, said lands above referred to being situated in — county, state of —, and bounded and described as follows, to wit: (here describe land).

Witness my hand and seal this — day of —, 19—.

\_\_\_\_\_.

**6210. Release from liability for personal injuries.**

Know all men by these presents that I, — of —, county of —, state of —, have received of the — street railway company, the sum of — dollars, in full payment, compromise and satisfaction for all injuries and loss or damage by me sustained or suffered, in mind, body and estate, by reason of an accident which occurred to me on or about the — day of —, 19—, at or near — street in the city of —, by which I sustained the following injuries: (here describe accident and nature of injuries). And in consideration of the prompt payment of said sum of money to me, the receipt whereof is hereby acknowledged, and the further consideration of the compromise and settlement without suit of my claim against said company, I, for myself, my heirs, executors and administrators do hereby release the said company of and from any and all right of action, claim, demand or liability in any wise arising out of or which

may in any manner hereafter arise out of, or result from said accident, for injuries occasioned, loss of time, loss of services, loss of property, moneys expended or liability incurred, and from any and all claims, demands or liability of whatsoever nature, for or on account of any act or thing done or omitted to be done by said company, its officers, agents, servants or employes or any of them, or any one in its behalf.

In witness whereof, I have hereunto set my hand and affixed my seal this — day of —, 19—.

**6211. Release from liability for personal injuries—Another form.**

Know all men by these presents, that I, —, in consideration of the sum of — dollars to me paid by the — railroad company, the receipt whereof is hereby acknowledged, do hereby release and forever discharge the said company from all liability to me for or on account of all losses, damages, personal injuries and all losses which I have sustained on account of the accident which occurred to train No. — near —, on the — day of —, 19—, on which I was a passenger, and by which I sustained personal injuries and losses.

Witness my hand and seal this — day of —, 19—.

————— (Seal.)

**6212. Release from liability for personal injuries—Another form.**

This agreement, made this — day of —, 19—, by and between the — company and — of —, state of —, hereinafter known as the claimant—, witnesseth:

That said company hereby agrees that it will pay to said claimant— the sum of — dollars, as the sole consideration and without any other promise or agreement, the said claimant— hereby agree—, that — will accept, and receive the said sum from said company in full payment, satisfaction and discharge of all claims, demands and causes of action against said company, and especially from all claims and demands arising from injuries

received by said claimant— at or near —, state of —, on  
or about the — day of —, 19—.

———— Company,  
By ————— (Seal.)  
Title —————.  
————— (Seal.)  
————— (Seal.)

## RELEASE.

— hereby acknowledge that in full performance of the foregoing agreement, the — company has this day paid to — the sum of — dollars, and that — ha— received the same in accordance with said agreement in full payment, satisfaction and discharge of the claims, demands and causes of action mentioned in said agreement, all of which are hereby released.

————— (Seal.)

————— (Seal.)

Paid by draft No. —.

This agreement was read and signed by the said — in our presence at —, on the — day of —, 19—.

\$—	1	—————	—————
	2	—————	—————
		Name.	Address.

STATE OF —, }  
COUNTY OF —, } ss.

On this — day of —, in the year of 19—, before me personally appeared —, to me known and known to me to be the same person— described in and who executed the foregoing instrument, and acknowledged that — executed the same for the uses and purposes therein set forth.

—, —, —, 19—.

I, — of —, do hereby certify that I am of — nationality, the same as —; that I speak and understand both the — and English languages; that I have interpreted the contract and release on the opposite side of this paper to said — to



—— full understanding, and —— signed the same with full knowledge of their contents.

\_\_\_\_\_,  
Interpreter.

Witnesses:

_____	_____
_____	_____
Name.	Address.

**6213. Release from liability for personal injuries—Another form.**

Know all men by these presents, that I, ——, of the county of ——, and state of ——, for and in consideration of the sum of \$—— to me in hand paid by the —— railroad company, the receipt whereof is hereby acknowledged, do hereby release and forever discharge the said company from any and all liability for, or from payment of, any further sum or sums of money for and on account of the claim I had or may have against said company, being as follows:

For injuries sustained on the —— day of ——, 19——, while in the service of the said company as car repairer at ——, by a car slipping off the jack and catching my left arm between the body of the car and the truck thereof, smashing said arm so that the same had to be amputated above the elbow.

And I do hereby agree that this release shall operate to any suit at law or otherwise which I or any of my heirs, executors, administrators or personal representatives may or can sustain by reason of a claim for same.

Witness my hand and seal this —— day of ——, 19——.

**6214. Release from liability for personal injuries—Another form.**

This is to certify that I, —— of —— county, state of ——, have this day, —— of ——, 19——, received of —— railway company, \$—— in full payment and satisfaction of all claims and demands of whatsoever kind or character, and I hereby remise, release and forever discharge the said company, its operative, leased, controlled and auxiliary lines and companies, of and from all manner of actions, causes of actions, suits, debts and sums of money, dues, claims and demands whatsoever in

law or equity, which I have had or now have against said company by reason of any matter, cause or thing, whether the same arose upon contract or upon tort.

The above payment being for the amount agreed upon in settlement of a claim by me held against said company on account of injuries received at —, on the — day of —, 19—, while assisting in switching a burning baggage car from the main track to the side track, I being an engineer in the employ of said company at said time.

Said injury so received consisting of a deep, punctured and lacerated wound on the inner surface of the right thigh.

In testimony whereof, I have hereunto set my hand this day and year above written.

#### 6215. Release from liability for personal injuries—Another form.

Know all men by these presents, that I, —, for and in consideration of the sum of — dollars (\$—), to me paid, the receipt of which is hereby acknowledged, and the further consideration of the sum of — dollars (\$—), paid at my request for medical and surgical services rendered me, do hereby release and forever discharge — from all causes of action, suits, claims and demands which I now have, or may hereafter have, resulting from any and all injuries sustained by me on or about the — day of —, 19—, at —, while in the employ of —.

It is further agreed that the consideration named in this release is the sole and only consideration on account of which it is executed.

Witness my hand and seal at — this — day of —, 19—. \_\_\_\_\_ (Seal.)

Witnesses:

\_\_\_\_\_  
\_\_\_\_\_

#### 6216. Release of dower.

This indenture made this — day of —, 19—, by and between — of —, party of the first part, and — of —, party of the second part, witnesseth:

That whereas one —, late of the county of —, state of —, departed this life on the — day of —, 19—, intestate, leaving said first party, his wife, and the said second party, his sole and only heir at law, surviving him.

And whereas said intestate died seized in fee simple of an estate of inheritance consisting of certain lands and tenements in which the said first party hereto is entitled to dower. And whereas said first party now desires to sell and convey all her right and title to said dower, and second party desires to purchase same;

Now, therefore, in consideration of the sum of — dollars in hand paid by second party to first party, the receipt of which is hereby acknowledged, said first party does by this indenture release unto said second party, his heirs and assigns, all right, title, claim or demand of or to dower which she has, or if these presents had not been executed, could claim of, in or to all or any part of the lands and tenements of which her said husband died seized as aforesaid: and first party further covenants with said second party, his heirs and assigns, that neither she, nor any other person for her or in her name shall at any time hereafter bring or prosecute any claim or demand against said second party, his heirs or assigns on his or their lands or tenements for, or by reason of, any dower due to her, but she and they shall forever hereafter by these presents be estopped and barred of and from all actions, claims and demands of dower in and to said lands and tenements.

In witness whereof, etc.

#### 6217. Release from liability for damages.

———— (Name.)

For the sole consideration of — received to — full satisfaction of the — company, — hereby release and discharge the said company from all claims and demands against it, and

especially from all liability for damages of whatsoever kind, nature or description sustained by —.

Received payment, —, —, 19—.

Issued —.

Paid by draft No. —.

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

\_\_\_\_\_ (Seal.)

This agreement was read and signed by the said — in our presence at —, on the — day of —, 19—.

\$—, I \_\_\_\_\_.

2 \_\_\_\_\_.

Name. Address.

STATE OF —, }  
COUNTY OF —, } ss.

On this — day of —, in the year of 19—, before me personally appeared —, to me known and known to me to be the same person— described in and who executed the foregoing instrument, and acknowledged that — executed the same for the uses and purposes therein set forth.

—, —, —, 19—.

I, — of —, do hereby certify that I am of — nationality, the same as —; that I speak and understand both the — and English languages; that I have interpreted the release on the opposite side of this paper to said — to — full understanding, and — signed the same with full knowledge of its contents.

\_\_\_\_\_,  
Interpreter.

Witnesses:

\_\_\_\_\_.

\_\_\_\_\_.

Name.

Address.

**6218. Covenant not to sue.**

Know all men by these presents: That I, —, of Boston, in the County of Suffolk, in the Commonwealth of Massachusetts, in consideration of two hundred (\$200.00) dollars and other valuable considerations to me duly paid, do hereby covenant with —, trustee, that I will never sue or attach the said —, trustee, or his estate, for or on account of a certain claim for damages described in the plaintiff's declaration in a certain action brought by her against —, trustee, and others, in the superior court in the County of Suffolk, which action is numbered 51303, and that these presents may be pleaded as a defense to any action or other proceeding which may be brought, instituted or taken by me against the said —, trustee, or his estate, in breach of this covenant.

In witness whereof, I have hereunto set my hand and seal this — day of —, A D. 19—.

(Signature and Seal.)

1. Matheson v. O'Kane, 211 Mass. 91, 97 N. E. 638.

**6219. Covenant not to sue one of two or more joint tort-feasors.**

Whereas on March 2, 1909, —, the undersigned, now sixty-three years of age, was in the employ of the — Railway Company as a brakeman, and at about noon on said day was working in the line of his duty on track No. 9, known as the North Track, at the coal bin of — Company's plant in the city of —, and while standing on the step of a coal car that was being switched, was caught between a post in the coal bin near said track and the coal car on which he was standing and was seriously injured, sustaining a fracture of the left collar bone, bruises about the left hip, injury to the nervous system, especially to the left sciatic nerve and otherwise injured in his person, which injuries he claims are permanent; and whereas the undersigned, said —, claims that said injuries were caused by the negligence of said — Railway Company and of other persons and corporations and without his fault, and has demanded compensation for said injuries in a sum greater than hereafter mentioned as paid, and said — Railway Company denies that it or any of its

servants are guilty of any negligence whatever in the premises, but nevertheless, it being the desire of said —, and said — Railway Company to avoid litigation between them and the expense thereof on account of said dispute and forever set at rest the differences so existing between them, but in such way that such settlement shall not impair or affect the claim of said — against any person or corporation other than said railway company for negligently causing or helping to cause the said injury: Now therefore, in consideration of the premises, and of the sum of two thousand (\$2000.00) dollars to him in hand paid by said — Railway Company, the receipt of which he hereby acknowledges, the undersigned, the said —, hereby covenants and agrees for himself, his executor or executors, administrator or administrators, respectively, to and with the said — Railway Company that neither he, they, nor any of them will ever sue or bring any action to be brought against said — Railway Company, on account of injuries and damage to him occasioned by or growing out of the incident above described.

In witness whereof, etc.

1. Parry Mfg. Co. v. Crull (Ind. App.), 101 N. E. 756.

**REVIVING AND CONFIRMING AGREEMENTS.****6220. Debt discharged by bankruptcy.**

Agreement made this —— day of ——, between —— of ——, the debtor, and —— of ——, the creditor.

Whereas on the —— day of ——, 19——, said debtor, being then indebted to the said creditor in the sum of —— dollars, was adjudged a bankrupt (or an insolvent under the laws of the state of ——), and under such bankruptcy his creditors have been paid a dividend of —— per cent. on their claims, and he has been fully discharged from all liability for the residue of his said debts; but in consequence of said creditor having during the pendency of said proceedings supplied him not only with the necessary funds for carrying out the same, but also with the means of maintaining himself and his family, he, the said debtor, considers himself morally bound to pay him the residue of said debt, as well as the sum of —— dollars with which he has supplied him as aforesaid:

Now these presents witness that in consideration of the facts before recited, as also of the agreement on the part of the said creditor hereinafter contained, and for the purpose of rendering himself legally liable to said creditor for the payment of the remainder of said debt from which he was discharged in bankruptcy as aforesaid, amounting to the sum of —— dollars, the said debtor hereby expressly acknowledges that he is justly indebted to the said creditor in said sum of —— dollars, as well as the sum of —— dollars advanced to him as aforesaid since his said bankruptcy, and agrees to pay said sums within —— months from the date hereof (or by the following instalments, namely:), together with interest thereon at the rate of —— per cent. per annum.

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees that he will not sue for, or require payment of, the said debt, unless and until

default shall be made in payment thereof at the time hereinbefore appointed for the payment of the same.

In witness, etc.

1. See ante, vol. 1, § 212, and vol. 3, §§ 1994, 2074.

2. Such an agreement must not be entered into prior to or during bankruptcy.

**6221. To pay debt contracted during infancy.**

This agreement, made, etc. (parties as in last form).

Whereas on the — day of —, 19—, said debtor, being then a minor, purchased of the said creditor a watch, for the sum of — dollars, and having now attained his majority and desiring to ratify the purchase, for the purpose of giving full effect to his liability for the payment of such debt, proposes to enter into the following agreement: Now these presents witness that in consideration of said purchase and the delivery of said watch to him as aforesaid, and of the agreement on the part of said creditor hereinafter contained, said debtor hereby expressly acknowledges the said debt to be justly due to the said —, and agrees to pay the same within — months from the date hereof, together with interest thereon at the rate of — per cent. per annum.

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees that he will not sue for or require payment of the said debt or recover said property unless and until default shall be made in payment thereof at the time hereinbefore appointed.

In witness, etc.

1. See ante, vol. 1, § 321.

**6222. Agreement to revive debt barred by statute of limitations.**

This agreement, made, etc. (parties as in last form).

Whereas on the — day of —, 19—, said debtor purchased of the said creditor a horse for the sum of — dollars, and — years having passed since said purchase and the same being now unpaid, and therefore barred by the statute of limitations, and the debtor desiring to renew said indebtedness for the purpose of giving full effect to his liability for the payment thereof, enters into the following agreement:



In consideration of said purchase and the delivery of said horse to him as aforesaid and the forbearance of said creditor to sue for said purchase-price before recovery of the same was barred by operation of law, the debtor hereby acknowledges the said debt to be justly due to the said creditor, and agrees to pay the same within — years from the date hereof (together with interest thereon at the rate of — per cent. per annum).

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees not to sue for or require the payment of said debt unless and until default shall be made in the payment thereof at the time herein appointed.

In witness, etc.

1. See ante, vol. 3, § 2670.

**6223. Deed of confirmation by wife, on attaining twenty-one years, of settlement made by her while an infant.**

To all to whom these presents shall come, I, — the wife of — of —, send greeting. Whereas these presents are supplemental to an indenture dated the — of —, 19—, and made between my said husband, of the first part, myself (therein called spinster), of the second part, and — and —, trustees, of the third part, being the settlement executed in contemplation of the then intended marriage which was shortly afterward solemnized between my said husband and myself; and whereas I attained the age of twenty-one years on the — day of — last, and I have agreed to confirm the said settlement in the manner hereinafter appearing: Now know ye that pursuant to the said agreement, and in consideration of the provision made in my favor by my said husband, I do hereby confirm the said settlement so far as regards the trust funds thereby expressed to be thereby assigned by me; to the intent that the said settlement shall take effect as fully and effectually in all respects as if I had been, at the time of the execution thereof, of the full age of twenty-one years.

In witness, etc.

1. The real estate comprised in a settlement made during the wife's infancy must be formally conveyed by her, on attaining full age, to the trustees, to hold upon the trusts declared in the settlement.

## 6224. Confirmation of deed by indorsement.

Be it known, that the within deed of indenture was executed by me, —, therein named as grantor, while under the age of twenty-one years, and having now attained my full majority of twenty-one years, do by these presents and by this indorsement hereon made by me this — day of —, 19—, ratify, seal and deliver this present indenture as and for my deed, freely and voluntarily.

In witness whereof, I have hereunto set my hand and seal this day and year above written.

\_\_\_\_\_.

## RIPARIAN CONTRACTS.

## 6225. Contract to divide middle ground in river.

It is hereby agreed between the undersigned as follows: To divide up the middle ground or shore in — river, in section —, township — north, range — east, in — county, state of —, as follows: commencing at the upper end, at a point where — feet of water is reached, going down stream, dividing the space between same points into four equal parts, of the same length up and down said river, — conveying same by partition deeds as soon as possible, two parts to —, one part each to — and —. As said — desires to build or erect a — upon said middle ground, — shall have first choice of a site within said limits, and may also use, occupy, possess, keep and defend the whole from all others, until wanted by said — and —, provided, however, that nothing herein shall prejudice any existing rights of said — and —. But this indenture shall be of no force or effect whatsoever but shall be wholly null and void, until and unless the following conditions and contingencies happen, viz.:

This instrument shall be executed and delivered by all the parties hereto, and their respective wives.

A mortgage made and executed by said — to said —, dated —, 19—, recorded in the office of the — of said county on —, 19—, in mortgage record — at page —, shall be duly canceled and discharged and we, the undersigned, do sign, seal, execute and deliver this instrument and consent and agree to receive the same for the uses and purposes herein expressed; and we are to hold and possess the legal title and estate of, in and to said lands, granted as aforesaid, by said —, in the manner and for the uses and purposes and upon the terms, trusts, provisions and conditions aforesaid.

In witness, etc.

(Signatures, seal, witnesses.)

1. See *Fletcher v. Boom Co.*, 51 Mich. 284.

**6226. Quitclaim deed following above contract.**

This indenture made this — day of —, 19—, by and between — of — county, state of —, and —, of said county and state, and — of — county, said state, witnesseth: Whereas said — and — have and do now own jointly certain real estate hereinafter described, and whereas the interests of the parties therein are as follows: — one-half, — one-third, — one-sixth, and said real estate is to be divided and set apart in such proportions; and whereas, it is now agreed and determined by all the parties hereto to divide the same among the several owners as aforesaid:

Now, therefore, this indenture witnesseth that to — there is hereby set apart and conveyed all the right, title and interest of — and — aforesaid, and they do hereby forever quitclaim to said — the following described property: (description) with all and singular the hereditaments and appurtenances thereunto belonging, to have and to hold the same to his own proper use and benefit forever, and to — there is hereby set apart, etc. (as above), and to — there is likewise set apart, etc. (as above), all of said property above described is in — county, state of —. Each of the several parties to whom the several lots and parcels of land are herein set off, divided and conveyed shall have and hold the same to said several parties, their heirs and assigns forever.

In witness, etc.

(Signatures, seals, witnesses.)

(Add acknowledgment.)

**6227. Agreement between riparian owners as to erection of dam and regulation of the flow of water.**

Agreement made the — day of — between —, of the first part, and — of the second part.

Whereas the said — (the first-named party) is seized in fee simple of a piece of land situate at — in the county of — through which flows a stream, and — (the second-named owner) is seized in fee simple of land next adjoining the land of — (first-named), but farther up the stream, and the said — (second owner) has erected a dam on his land by reason whereof

the flow of the stream is at certain periods materially diminished, and in consequence disputes have arisen between said parties:

Now it is hereby agreed that the said dam shall be deemed to have been erected and shall remain with the express license and consent of the said —— (first-named) to the intent that neither the said —— (second owner) nor any person claiming under him shall acquire any easement in respect thereof or of said stream by prescription or otherwise.

The said —— (second owner) shall forthwith erect in his said dam a proper floodgate (dimensions described) so that in dry weather by opening said floodgate the water kept back by said dam may be admitted into the stream so as to flow through the land of said —— (first owner), who shall have the full right and privilege of regulating the flow of water by means of said floodgate, and for that purpose of entering upon the land of the said —— (second owner) by him or his tenants and agents and doing all things reasonably necessary in that behalf.

In witness, etc.

(Signatures of both owners.)

## SALES.

See BILLS OF SALE, AGREEMENTS TO SELL AND CONDITIONAL SALES.

**SERVICE CONTRACTS.**

See EMPLOYMENT CONTRACTS.

**6230. Gas service contract.**

I request the —— gas company of ——, ——, to make proper connections and serve me with a supply of gas for my residence at No. —— ——— street in the city of ——, and in consideration thereof I promise to take such gas only through a meter supplied by said company, and placed in said premises; to pay said company in monthly payments at their office in said city, for all gas supplied said premises from the —— day of ——, 19——, as indicated by such meter, or otherwise ascertained, at and for the price established by the city ordinance under which gas is supplied; also to be responsible for all gas consumed in the said premises until —— hours after written notice has been duly served on said company to discontinue the supply of gas; and I further agree to be bound by the following regulation of said company: That the duly authorized agent of the said company shall have full access to the meter and its connections at all reasonable hours, and for any purpose, and may remove the same, and may also, upon subscriber's failure to comply with any of the rules of the company, sever the connections with the service pipe, and discontinue the supply.

It is expressly agreed that the service pipe and any extension thereof, the meter, meter connections and any fuel supply or other pipe at any time placed in said premises by or at the expense of said company or its predecessors shall belong to it, and be subject to removal only by it or its successors.

The receipt of a copy of this contract is hereby acknowledged.

In witness whereof, the said subscriber has hereunto set his hand and seal this —— day of ——, 19——.

\_\_\_\_\_  
1. As to public service corporations, see ante, vol. 1, ch. 19.

**6231. Agreement to furnish electricity to town or city.**

This agreement made this —— day of ——, 19——, between —— of ——, hereinafter called the power company, and —— of ——, hereinafter called the town, witnesseth:

Whereas, said power company is the owner of a power plant in the city of — and operates the same for the purpose of furnishing electricity for light and motive power,

And whereas, said town is about to install a system of electric lights for the purpose of lighting the streets and alleys under authority of an ordinance legally enacted,

Now, therefore, it is agreed between said power company and said town that said power company shall furnish to said town electricity for the purpose of lighting — arc lights to be used in lighting the street in said town at whatsoever places may be designated, and — incandescent lights to be used for lighting the public buildings and alleys and streets of said town. All wires, switches and other material and appliances installed by said company at its expense are not sold under this contract, but are to be and remain the property of said power company. Said town further agrees to provide space and posts for the wires and appliances and also that a properly authorized agent of the power company shall have access, at all times, for the purpose of examining, repairing or removing its wires, material and appliances.

Said town agrees to allow the power company, its successors and assigns the exclusive privilege of furnishing electricity for a period of — years from date for the purpose of lighting said town. The power company agrees to use a reasonable diligence in providing a regular and uninterrupted supply of electricity, but it does not guarantee such; and it shall not be liable in damages to said town for failure to temporarily supply electricity beyond the pro rata deduction for the actual time of such failure. Renewals of incandescent lamps shall be furnished to said town by the power company at a cost not to exceed — cents apiece. Arc lamps will be furnished and maintained by the power company, and at all times they shall remain the property of the power company.

In consideration of the foregoing, said town hereby agrees to pay said power company the amount of — dollars per month during the life of this contract; and it is provided that at all times said power company shall hold said town harmless

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from all damage caused in the construction and maintenance of said lights and lighting connection.

This contract shall be deemed to be self-renewing for successive periods of — years each unless one of the parties shall, on or before — days prior to the expiration of any term hereunder, give written notice to the other party of his desire to have the contract terminated.

In witness, etc.

**6232. Contract to furnish electricity to consumer.**

Agreement, entered into this — day of —, 19—, between the —, hereinafter called the company, and the —, hereinafter called the consumer, both of —, — county, state of —.

The company agrees to furnish to the consumer and the consumer agrees to take from the company for and during a period of five years from the time such service is commenced, electricity for the operation of — incandescent lamps, of — lamps of — horsepower in motors, and steam for heating — feet of radiation, and the consumer agrees to pay the company for such service on the following basis:

The rate of charge for all electricity consumed per month, as shown by meters to be installed by the company to indicate the total consumption, shall be — cents per thousand (1000) watt hours for the first — thousand watt hours, and all current in excess of this shall be furnished at — cents per thousand watt hours.

The rate of charge for the steam consumed shall be at the rate of — cents per square foot of heating surface, this to include any radiation set in place or any uncovered pipes that may be used for heating surface.

Bills shall be rendered to the consumer on the first of the month for the preceding month's supply of electricity, and shall be paid at the company's office within — days from the dates thereof.

The company agrees to install the necessary service for the electricity or steam from its mains in the street to the inside of



the building and furnish the proper valves, switches, etc., at its expense, which are to remain the property of the company. Also the necessary meters to measure the electricity consumed and the arc lamps that are to be used under this contract. And the consumer agrees to provide space for the meters, wires and other appliances in such premises, and further agrees that no one who is not an agent of the company or otherwise lawfully entitled so to do, shall be permitted to remove, inspect or tamper with the same, and that the properly authorized agents of the company shall, at all reasonable hours, have free access to the said premises for the purpose of examining, repairing or removing said meters, wires and other materials and appliances.

The consumer agrees that the electrical equipment in said premises shall be and remain in a condition satisfactory to the board of public works of the city of —, the — fire underwriters' association, and the inspection department of the company.

The consumer also agrees to allow the company, its successors and assigns the exclusive privilege of furnishing electricity for lighting and power purposes and steam for heating purposes to said premises during the continuance of this contract; and also agrees that no electrical conductors for light or power purposes, other than those used in connection with the company's mains, shall be installed or remain in said premises during the period of this contract.

The company agrees to use reasonable diligence in providing a regular and uninterrupted supply of electricity for lighting and power purposes and steam for heating purposes, but does not guarantee a constant supply and will not be liable for damages to the consumer for failure to supply the electricity or steam to said premises.

Renewals of incandescent lamps to be furnished by the company at cost to the consumer on return of the old lamps to the company's lamp room.

The arc lamps shall be trimmed and maintained by the company.

In consideration of the benefits to be derived as herein speci-

fied the consumer agrees to pay at least a monthly minimum bill of \$—— for the electricity so furnished, and to pay the sum of —— per season for the steam furnished to the radiation as specified; payments for said heating to conform to the rules of the company.

It is understood and agreed that all change in wiring, piping, etc., inside of the building, is to be done at the consumer's expense and in accordance with the rules and regulations of the company.

This contract shall be deemed to be renewed unless one of the parties shall, on or before thirty days prior to the expiration of the time specified, give written notice to the other party of his desire to have the contract terminated.

This contract, although signed, is subject to the approval of the general manager of the company and shall not be binding on the company until indorsed with his approval.

It is finally agreed that all the terms and stipulations heretofore made or agreed to by the parties in relation to said service are merged in this contract, and that no previous or contemporaneous representations or agreements, made by the company's officers or agents, shall be binding upon the company except as and to the extent here contained.

In witness, the parties hereunto have set their hands and seals this day and year first above mentioned.

### **6233. Electric service contract.**

I hereby request the —— electric light company of —— to make proper connection and serve me with electric current for lighting purposes in my residence at No. —— street in the city of ——, subject to the terms and conditions indorsed hereon and made a part hereof. For said service I hereby agree to pay bills rendered according to said company's residence rates and classification, viz:

For the first —— units used in any month, —— per unit, and for all units additional in the same month, —— per unit; subject to a discount of —— if the bill is paid on or before the company's discount date as noted upon the bill; provided, however, that if the bill by meter in any one month shall be less than

— gross, then bill for — is to be rendered and paid, subject to discount for prompt payment; and further provided, that the classification of my said residence may be changed in accordance with the company's rule if the residence is altered or added to.

And I hereby agree to be responsible for such equipment as said company may furnish for my use until — days after notice in writing is by me mailed or delivered to the company's office of the withdrawal of this request.

Accepted, — Company.

(Signed) —.

—, Special Agent.

1. See ante, vol. 1, ch. 19.

#### 6234. Contract of a mining company to furnish coal to manufacturer.

This agreement, made this — day of —, 19—, between — of —, hereinafter called the mining company, and — of —, hereinafter called the manufacturer, witnesseth:

The mining company hereby agrees to furnish, and the manufacturer hereby agrees to take, all the bituminous run of mine, nut and slack coal that may be required by said manufacturer for its consumption in its — mills, located at —, provided that said sales shall amount to not less than — tons nor more than — tons per month from the date hereof until the — day of —, 19—, at the following and the respective f. o. b. cars at —: (here enumerate the grades of coal and the respective prices per ton.)

It is stipulated that run of mine coal shall be taken when nut and slack cannot be furnished.

The manufacturer hereby agrees to pay for all coal shipped during the previous month on or before the — day of each and every month. Invoice weights shall govern in making settlements.

It is mutually agreed, however, that the mining company shall not be liable for any claims for damages arising out of the failure to ship coal as herein agreed, when such failure is caused by strikes, lockouts, scarcity of cars, lack of transportation or other

causes beyond its control, or in case any of the terms of this contract shall have been violated by said manufacturer.

In consideration of the prices named in this contract the manufacturer hereby agrees to use and pay for not less than — tons of coal in each and every month during the term of this contract. Said prices are based on the present mining rate of — cents per ton, and if said mining rate shall advance or decline during the term of this agreement, the prices herein shall advance and decline proportionately.

In witness, etc.

**6235. Agistment of cattle—Agreement for.**

Agreement made the — day of —, 19—, between — of — (hereinafter called the farmer), of the one part, and — of — (hereinafter called the stockowner), of the other part, witnesseth:

The farmer agrees to take to graze and pasture upon his farm near the town of — stock and cattle of the stockowner at the following prices, namely, cows, each — dollars per month; calves, each — dollars per month; horses, each — dollars per month; sheep, — dollars per score per week, corn to be provided by — (state whom).

The period for pasturing shall extend from the — day of —, 19—, to the — day of —, 19—.

The number of animals at pasture may be varied by the stockowner from time to time, but any animal at pasture for part of a week shall be paid for as for a whole week.

The amount payable for pasturage shall be paid every fourth week from the date when cattle are first taken in.

No animals shall be moved until payment in respect of their pasturage shall have been made. The farmer shall have a general lien upon the whole of the animals for any sum for the time being owing for pasturage, and such lien may be enforced by public or private sale of any animal or animals for the time being upon such farm.

The farmer shall not be responsible for any loss arising from the restive nature or vice of the animals or other matters over which he has no control, nor for any sickness of the animals.

The farmer will give notice of any sickness of the animals as soon as it comes to his knowledge, but the stockowner shall pay all veterinary charges.

1. See ante, vol. 4, § 3107.

#### 6236. Agreement to teach school.

This agreement made this \_\_\_\_ day of \_\_\_\_, 19—, between \_\_\_\_ of \_\_\_\_, the teacher, and \_\_\_\_, \_\_\_\_ and \_\_\_\_, constituting the board of trustees (or school board) of district No. \_\_\_\_, town of \_\_\_\_, county of \_\_\_\_, state of \_\_\_\_, witnesseth:

Said teacher, being duly qualified and licensed to teach public school in said county and state, hereby contracts with said board of trustees to teach public school \_\_\_\_ of said district for the term of \_\_\_\_ consecutive months, commencing \_\_\_\_, 19—, in consideration of a monthly salary of \_\_\_\_ dollars, payable at the end of each month during the term of such employment. Said board of trustees reserves the right to provide a vacation or vacations of not more than \_\_\_\_ weeks in the aggregate during said term.

In witness, etc.

1. Oral contract, see ante, vol. 1, 604n.

#### 6237. Contract for scholarship.

Dated at \_\_\_\_, \_\_\_\_, \_\_\_\_, \_\_\_\_, 19—.

To the \_\_\_\_ Correspondence Schools, \_\_\_\_, \_\_\_\_:

I hereby request you to furnish me with a scholarship entitling me to a course of instruction by correspondence in the subjects included in the \_\_\_\_ course, with your copyrighted lesson papers, instructions, quizzes, drawing plates, practical problems and hypothetical cases, prepared and furnished by you for this course.

I agree to consider and hold as confidential all instruction papers, books, charts, maps, drawings, designs and such other material or student's helps as may be submitted to me as a part of my instruction, and at no time to permit any other than your regularly enrolled students in same course to study from or use such papers and student's helps.

I herewith enclose \_\_\_\_ dollars, (\$\_\_\_\_) as \_\_\_\_ (part or full) payment for this scholarship; the balance \_\_\_\_ dollars,

(\$——), I agree to pay regularly each and every month hereafter at the rate of —— dollars, (\$——) a month until this scholarship is paid for in full.

It is agreed that the above-named sum covers all charges for instruction in all of the subjects of the course, and pays all postage on lessons, plates and corrected papers sent from the schools to me, providing I reside in the United States, their possessions, Canada or Mexico.

It is agreed that I shall pay full postage on all matter sent to the schools.

It is understood that:

(a) Upon satisfactory completion of the course of study herein named, I will be granted a diploma or certificate of proficiency.

(b) The scholarship is not transferable.

(c) Money paid on a correspondence course can be applied on complete course in any similar resident school owned and conducted by the —— correspondence schools at —— . Money paid for tuition will not be refunded.

(d) Should it be necessary to lay aside my studies for any time, that I can take them up again without forfeiting my scholarship. Payments to be made regularly as they become due.

(e) You shall have the right to keep one of my first and one of my last drawing plates or lessons.

(f) Scholarships are good for five years from date of issue.

Signature ——.

#### 6238. Fire protection contract.

This agreement, made this —— day of ——, 19——, between —— company and the —— salvage corps of ——, witnesseth that in consideration of the payment of —— dollars (\$——), for one year's subscription from the —— day of ——, 19——, the —— salvage corps agrees to protect the undersigned at his premises, No. —— street, in case of fire, burst water pipes, open doors or windows; to summon him in case of fire, protect from thefts at fires, and protect interests to the best of its ability when notified.

In witness whereof, the parties hereunto have set their hands and seals this day and year above written.

\_\_\_\_\_, company,  
\_\_\_\_\_.

### 6239. Contract for steam heating service.

(FLAT RATE.)

Agreement entered into this \_\_\_\_ day of \_\_\_\_, 19\_\_, between the \_\_\_\_, hereinafter called the company, and \_\_\_\_, hereinafter called the consumer, both of the city of \_\_\_\_, \_\_\_\_ county, state of \_\_\_\_.

The company agrees to supply to the consumer, and the consumer agrees to take from the company for a term of years beginning \_\_\_\_, 19\_\_, and ending \_\_\_\_, 19\_\_, steam for heating the building known and designated as \_\_\_\_ in the city of \_\_\_\_, \_\_\_\_ county, state of \_\_\_\_.

Steam shall be furnished only during the heating season, a period of eight months, beginning September \_\_\_\_ and ending May \_\_\_\_, and only as may be required by the weather conditions during this period.

The company agrees to use reasonable diligence in providing a regular and uninterrupted supply of steam sufficient to maintain a temperature of \_\_\_\_ degrees within the premises at point of control, when the outside temperature is \_\_\_\_ degrees below zero, but does not guarantee such, and shall not be liable in damages to the consumer for failure to temporarily supply steam to said premises, due to accidents, strikes or other causes beyond the control of the company, beyond a pro rata deduction for the actual time of such failure; and such claims for deductions, to be valid, shall be presented in writing at the office of the company within \_\_\_\_ hours of the time of occurrence of such failure. There shall be no charge at all made by the company for such periods when the temperature at point of control in the premises supplied drops below \_\_\_\_ degrees Fahrenheit; and for such periods when the temperature may be greater than \_\_\_\_ degrees and less than \_\_\_\_ degrees a discount shall be allowed justly proportional to the loss below \_\_\_\_ degrees; provided that such discount shall not be allowed unless the company shall have

been notified in writing of such insufficiency of heat, and given an opportunity to discover the cause, and if due to the company's service, to remedy the same, nor shall it be required when the cause is due to defective or insufficient radiation, or a violation of the rules and regulations of the company for receiving and distributing the steam, or to defective construction of the building, or to any fault of the consumer.

The company shall have the right to cut off the supply of steam for nonpayment of bills when due, for failure to comply with its rules and regulations, and in case the consumer allows, suffers or permits loss or waste of steam, or the condensation therefrom, or the use thereof by any other person or for any other purpose than that herein provided for; and in the event of steam being thus cut off the consumer agrees to reimburse the company for the entire expense of making all service connections.

Special attachments to piping, such as hot-water heating apparatus and the like, shall be arranged for as provided in the company's rules and regulations, and will be charged for at special prices, depending on the character of the service required.

The charge per season for said service shall be — (\$—) dollars, to be paid by the consumer at the office of the company in the following manner, to wit: — (—) per cent. of said sum shall be charged to the consumer on the — day of October, and a like sum on the — days of November, December, January and February immediately following, all bills payable within — (—) days from date.

The rate of charge for a fractional season shall be on the following basis: September — to October —, inclusive, — (—) per cent. of the charge for a full season; month of November, — (—) per cent.; month of December, — (—) per cent.; month of January, — (—) per cent.; month of February, — (—) per cent.; month of March, — (—) per cent.; month of April, — (—) per cent.; May — to May —, inclusive, — (—) per cent. No discount will be allowed for the fractional month in which the service may be commenced or discontinued.



(Description and plans of premises to be heated.)

Should any change in the exterior of the building be made during the term of this contract, such as to increase or decrease the steam condensation, a corresponding increase or decrease, respectively, in the annual charge shall be made.

It is agreed that the rules and regulations of the company, copy of which is hereto attached, shall become a part of this contract.

This contract shall be deemed to be renewed for successive periods of one year each, unless one of the parties shall, on or before — days prior to the expiration of the contract term, or any successive term, respectively, give written notice to the other party of his desire to have the contract terminated.

This contract is not subject to assignment by the consumer without the approval of the company, but shall inure to and bind the successors and assigns of the company.

This contract, although it may be signed by an agent of the company, is subject to the approval of the general manager, or other executive officer of the company, and shall not be binding on the company until endorsed with his approval.

It is finally agreed that all the terms and stipulations heretofore made or agreed to by the parties in relation to said heating service are merged in this contract, and that no previous or contemporaneous representations or agreements, made by the company's officers or agents, shall be binding upon the company except as, and to the extent, herein contained.

Should the consumer fail to renew lease on or vacate above premises this contract may be terminated.

In witness whereof, parties hereunto have set their hands and seals this day and year first above mentioned.

#### **6240. Contract for telephone message service.**

The undersigned, in consideration of the discount hereinafter provided, guarantees and agrees to and with the — company, that he will purchase on the first day of each month during the continuance of this contract coupon ticket books amounting, at face value, to the sum of — (\$—) dollars, paying on delivery therefor, and for all additional coupon ticket books pur-

chased under this contract, at such face value less a discount of — (—) per cent.

The company will receive the coupons attached to said books if presented by the undersigned, or his agent or employé, in payment, at such rates as it may establish from time to time, for messages relating to his individual business and passing over its lines only. Said coupons will not be received in payment for messages passing over the lines of other companies, or for messages passing between points, both of which are in the territory of the same local company, or in payment of the sixth calendar month following that in which they are issued.

It is expressly understood and agreed that all messages sent under this contract shall be subject to the rules and regulations of said company; and also to such conditions and restriction as may govern the sending of telephone messages from any of the telephones used by the undersigned, and in payment for which messages he tenders said coupons.

It is expressly agreed that if any coupon ticket book purchased hereunder, or the coupons attached thereto, be used by any person other than the undersigned or his agent or employé as provided herein, or for messages relating to other than his own business, or if any of the conditions herein contained are not fulfilled by the undersigned, then this contract may be canceled at the option of the company; and if so canceled, all books, tickets and coupons issued thereunder shall be surrendered and forfeited to the company.

This agreement shall take effect on the first day of —, 19—, and shall continue in force until the first day of —, 19—, and thereafter until canceled by thirty days' notice in writing given by either party to the other; and becomes binding as soon as accepted by the — company, evidenced by the signature of its general contract agent hereto. Its terms cannot be varied or waived by the representations or promises of any canvasser or other person, unless the same be in writing and signed

by said general contract agent. The subscriber acknowledges that he has received a duplicate hereof.

Signed at —, —, 19—,

Accepted by the — company.

\_\_\_\_\_,  
General Contract Agent.

\_\_\_\_\_.

#### 6241. Contract for garage service.

This agreement, made this — day of —, 19—, between — of —, hereinafter called the garage keeper, and — of —, hereinafter called the automobile owner, witnesseth:

In consideration of the payment of the stipulated sum of — dollars per month, due and payable on the — day of each month, the said garage keeper hereby agrees with said automobile owner to store, keep and take care of his machine, whose license number is —, at his garage at No. — street, in the city of —; to keep the same clean and in good condition, free from dirt and dust; to polish the brass work; to supply the same with all gasoline that may be necessary for it, except in the event that the amount of said gasoline shall exceed — per week; to deliver said machine to said automobile owner at his place of residence, or to such other place as he may direct, upon call, and to take the same back to the garage at such times as said automobile owner shall call upon him to do so.

It is expressly understood and agreed that said garage keeper shall not make any repairs on said machine except after first giving notice to said automobile owner and receiving orders from him to that effect. For any and all repairs that may be so made, said garage keeper shall charge such sums as are customary.

In witness whereof, etc.

1. See *Wilson v. Wyckoff, Church & Partridge*, 117 N. Y. S. 783.

#### 6242. Contract for sign rental and lighting.

This agreement, made and entered into this — day of —, 19—, between the — company, hereinafter called the company, and —, hereinafter called the lessee, witnesseth:

The company agrees to install, within a reasonable time, the electric sign fully described below, with a system of wiring to connect the sign with the — circuit, at the premises of the lessee at No. —, —, city of —, state of —. (Here insert description of sign.)

It is agreed that said sign, together with its wiring and hanging appliances, shall at all times remain the property of the company. It is also agreed that the company will furnish the electricity required for illumination of said sign, and will use reasonable diligence to provide an uninterrupted supply, with the proviso that if the said sign, through any default of the company, shall fail to burn properly, the only liability of the company shall be to abate rent for the actual time of no service; and provided further that if the company shall be unable, temporarily or permanently, to purchase the electricity necessary to illuminate said sign, then the company may cancel this agreement by giving the lessee notice of cancelation in writing. The company reserves the right to switch the sign on and off, whether by an inspector or automatic switch, occasional variations in time not constituting any claim for rebate. The company's employés shall, at all reasonable hours, have free access to the premises for the purpose of examining, repairing or removing said sign.

The company agrees to give reasonable service, to keep the sign relamped and in repair, but if some of the lamps fail to burn on account of being burned out, there shall be no rebate until the company shall have received twenty-four hours' notice at its home office, in writing from the lessee, that lamps are burned out; and shall have failed, after the expiration of said twenty-four hours, to renew said lamps, in which case lessee's bill shall be ratably reduced.

In consideration of the premises hereinbefore set forth, the lessee agrees to keep and use said sign for — continuous months, beginning —, and ending —, the lights on said sign being burned only from — M. to — M. — days per week and for any additional use thereof, the company's consent, evidenced in writing, must be obtained by lessee.

Upon a breach of this agreement by the lessee, the company

may remove the sign, wiring and all its other property, and cut off the supply of electricity, in which event the lessee will pay the company a sum equivalent to — dollars for each unexpired month of the term of the contract, which sum is agreed to be the actual loss suffered by the company by reason of such breach.

The lessee agrees to secure all necessary public and private permission to hang said sign, and upon failure to do so, or upon refusal of lessee to allow said sign to be hung, the company shall not be held responsible for failure to hang said sign, and the lessee agrees to indemnify the company for any expense incurred by it previous to receiving written notice from lessee that such permits cannot be obtained. The lessee shall not allow any other sign to be attached to said sign or its hanging, and agrees to indemnify the company for all damages to said sign, fastenings or connections, and to indemnify the company for any damages caused by said sign during the life of this contract.

The lessee agrees to pay the company the sum of — dollars (\$—) each week at the office of the company as rental for the use of said sign and lighting thereof.

This instrument recites all agreements existing between the parties hereto with respect to said sign.

This contract, although signed, is subject to the approval of the manager of the company, and shall not be binding on the company until indorsed with his approval.

———— Company.

————, Lessee.

Approved —, 19—.

#### 6243. Contract for night watch and fire alarm signal.

Memorandum of agreement, made this — day of —, 19—, between the — Company of —, hereinafter called the — Company, and the — Company, hereinafter called the subscriber, witnesseth:

That for the mutual considerations hereinafter named, the — Company agrees, at its own expense, to promptly place on the premises known as — St., —, in the positions designated by said subscriber, — Night Watchman's Telegraph Signal

and Fire-Alarm Boxes, with necessary wire connections and the apparatus for the efficient working of the same.

The watchman of the said subscriber shall communicate with the central office of the — Company by means of the said telegraph signal boxes, at such intervals during the night, commencing at — o'clock, — M., and ceasing at — o'clock, — M., as shall be determined by said subscriber, and reported in writing to the office of the — Company.

The — Company further agrees to furnish to the said subscriber a daily report in writing, showing the several times at which signals were received during the previous night, and also the excuse or explanation given by the watchman for any failure to signal as aforesaid.

In case of accident or disability of the watchman of the said subscriber the said — Company will furnish a temporary watchman, for which a reasonable charge shall be paid by the subscriber.

The said subscriber hereby agrees to pay the — Company, upon completion of installation of said equipment, the sum of — dollars (\$—); and also to pay to the — Company for such service monthly in advance, beginning on the date of installation, the further sum of \$— per annum, for the period of three years and thereafter until 60 days' notice shall have been given in writing, by either party, of a desire to terminate this contract; the — Company, in case of the destruction of its plant or total failure of service from other cause, to refund a pro rata portion of the rental paid for the current month.

It is further understood and agreed that the said instruments, and all wires and other apparatus appertaining thereto are, and shall be and remain, the sole property of the — Company, and the said subscriber hereby authorizes and empowers the — Company, or its agents, or assigns, to enter the building or premises and remove the said instruments, wires and apparatus at the expiration of this agreement, or at any time previous thereto, in case the said subscriber shall have failed to pay over to the — Company the stipulated annual rental and payments aforesaid, or any other charge for services or expenditures that the said

—— Company may have been called on to perform or incur under any of the provisions of this contract.

In witness whereof, parties have hereunto set their hands and seals this day and year above written.

## SUBSCRIPTIONS.

### 6245. Agreement with promoter to obtain subscribers for corporation to be formed.

This agreement, entered into among the parties whose names are undersigned, witnesseth:

For and in consideration of the advantages arising to each of us from concert of action through the form of corporate organization and of the mutual promises and agreements herein contained, made each for himself, and with each of the others who have heretofore, or who do hereafter sign this agreement, subscribing to shares of stock in the corporation to be hereafter formed, and of the further consideration hereto, subscribing for stock in said proposed corporation, upon the terms herein contained, and aiding in incorporating and organizing the same, we do hereby covenant and agree to form a corporation as herein indicated and do hereby subscribe for the stock of such corporation the amounts set opposite our respective names, and do hereby constitute and appoint the said — our agent and attorney to procure such subscriptions, and to aid in organizing such corporation, for which services said — shall receive the sum of — dollars, to be borne by each of the parties hereto in the proportion the stock subscribed by him bears to the total stock subscribed (or for which services said — shall receive — shares of stock in such corporation, fully paid up). The undersigned also agrees to pay said —, or at their request to said corporation, the sum of — dollars upon each share subscribed, when the sum of — dollars shall be subscribed, or at such time thereafter as said — may designate upon — days' prior notice, for the purposes hereinafter set forth.

This agreement shall become operative only in case the sum of — dollars shall be subscribed.

The name of this corporation shall be —.

The location of the principal office shall be at —.

The purpose of such corporation shall be —.



The amount of capital stock shall be — dollars in shares of — dollars each, to be paid for as follows: (Here insert whether to be paid at request of agent or upon call of directors.)

Said corporation shall be organized under the laws of the state of —.

Date.	Names.	No. Shares.	Amounts.
_____	_____	_____	_____

1. See ante, vol. 2, §§ 1480, 1610.

2. As to statutory requirements, see ante, vol. 2, § 1254.

#### 6246. To build church.

Whereas the trustees of the church corporation, known as —, are about to erect a church for such corporation: Now, therefore, we, the undersigned, for the purpose of such erection, in consideration of our mutual promises, hereby agree to and with such trustees and to and with each other, to pay to —, the treasurer of said corporation, or his successor in office, the respective sums set opposite our several names. And we hereby authorize and direct said trustees to expend such sums in the erection of said church. Said sums are due and payable to the said treasurer on or before the — day of —, 19—.

#### 6247. For Y. M. C. A. building.

Agreement, made this — day of —, 19—, between the Young Men's Christian Association of —, and — of —, the subscribers hereto:

Whereas the subscribers desire and deem it to their advantage to have a building for said association, with a library, reading rooms and a gymnasium, erected at —, in the county of —, and state of —, and the association has agreed to erect said building at said place, at a cost not to exceed the sum of — dollars: Now this agreement witnesseth, that in consideration of the mutual promises herein contained, the parties hereto agree as follows:

The association hereby agrees to erect, or cause to be erected, said building at —, according to plans and specifications to be approved by its board of trustees, at a cost not to exceed — dollars, and to have the same ready for occupancy on the — day of —.

The subscribers hereto, in consideration thereof, hereby agree, and agrees each for himself or herself, his or her heirs, executors and administrators to pay to said association the sum set opposite their respective names, hereunto subscribed, on the dates and according to the terms herein expressed.

This contract shall not be binding on either party hereto until at least the sum of —— dollars is subscribed; provided, however, that neither said association, nor any subscriber or all of them, shall have power to cancel this agreement as to him, her or them prior to the —— day of ——, 19——, it being the object of this proviso that the parties hereto shall have until said date to secure subscriptions amounting to the entire sum of —— dollars.

If said entire sum of —— dollars is not subscribed on or before the —— day of ——, 19——, then any party hereto shall have power to cancel this contract as to him, her or them, by giving a written notice, personally or by mail, of an intention so to do. If said agreement is canceled by said association, notice addressed to the last ascertainable post-office address of any subscriber shall be sufficient; if by a subscriber, notice shall be given to the board of trustees.

Within —— days from the time that the total amount of —— dollars is subscribed, said association may call for the payment of at least twenty-five (25) per cent. of the respective subscriptions of said subscribers, and may call for the whole, or any part of the remainder at any time after —— months from said first call.

In witness, etc.

#### **6248. To endow professorship in college.**

This agreement, made this —— day of ——, 19——, between —— of —— (the donor), and —— of —— (the board of trustees), witnesseth: In consideration of the fact that the donor is a graduate of —— college, and in further consideration of the high regard and feelings of gratitude which he bears toward said college, he does hereby give, grant, set over and deliver unto the board of trustees, their successors and assigns forever, the sum of —— dollars, upon the following terms and conditions: Said sum of money shall be invested by said board

of trustees in gilt-edged, interest-bearing securities, yielding at least 4 per cent. net per annum. Said board of trustees shall create and establish a professorship for the purpose of teaching English in said college, and the annual income from said sum shall be used for the purpose of paying the salary of the professor appointed by said board of trustees to occupy the chair so created, his house rent and the expense necessary for the full performance of the object of said professorship. Said salary shall at no time exceed — dollars per year; the sum used for carrying on the work of said professorship shall not exceed — dollars per year; and if the amount of said income shall at any time exceed the amount of the sums just named, said overplus shall be used for the purchase of such books for the college library as the board of trustees, in their discretion, may direct. If, at any time, the aforesaid professorship shall be discontinued or changed from its original purpose, the amount of money hereby transferred shall revert to the donor during his lifetime, and in the event said discontinuance or change shall occur after his death, then the money shall revert to his next of kin.

In witness, etc.

#### 6249. To endow college.

We, the subscribers hereto, in consideration of our mutual promises, and of the effort by the trustees of — college to raise a fund of — dollars for purposes hereinafter stated, hereby bind ourselves to pay to said trustees the sums set opposite our respective names in four (4) equal annual payments, the first of which shall be made on the — day of —, 19—. The conditions of these subscriptions are:

The money collected by said trustees shall be invested permanently in a productive fund, yielding at least — per cent. interest, which shall be applied to the payment of the following members of the faculty (here state).

We shall not hold ourselves bound to pay the sums subscribed unless the aggregate of our subscriptions and contributions hereto shall amount to — dollars on the — day of —, 19—, nor until — of — shall make a certificate that, in his judg-

ment, responsible subscriptions and contributions amounting to — dollars have been made.

Date.

(Signatures.)

**6250. For erection of factory.**

Whereas — of — and his associates propose to erect and operate an automobile factory in — of —, and it is to the interests of the business men, merchants and inhabitants of said city of — that said automobile factory should be established: We, the undersigned, in consideration thereof, and of the erection and operation of said automobile factory, do hereby agree with each other, and with the several signers hereto, and with said — and his associates, that we will subscribe and pay the sums set opposite our respective names, for the purpose of buying a site and building the necessary buildings in said town of — for said automobile factory; provided, however, that said automobile factory shall continue to operate for a period of at least — years; that it shall at all times employ at least — men, and that the sums paid in pursuance hereof shall be turned over to a board of trustees elected by the Commercial Club, who shall keep such money until said site has been purchased and the necessary buildings have been erected, when the same shall be turned over to said — and his associates upon a deed subject to the conditions herein contained. It is expressly agreed and understood that the subscriptions hereto shall be due and payable to the following board of trustees —, appointed by said Commercial Club, consisting of — and —, at — in — on the — day of —, 19—, without relief, unless on said date collectible, bona fide subscriptions amounting to the entire sum of — dollars shall not have been secured. If said automobile factory shall cease to operate within the time herein specified, or shall employ less number of men than herein named as a minimum, or in any other wise commit a breach of said condition, said site and factory shall revert to said board of trustees or their successors, appointed by said Commercial Club, to be

held for the use of the undersigned business men, merchants and inhabitants of said city of —.

In witness, etc.

Date.

(Signatures.)

1. As to consideration for subscriptions, see ante, vol. 1, §§ 228, 228n, 229, 229n, 230, 230n.

**TELEGRAPH AND TELEPHONE CONTRACTS.****6255. Telegram.**

\_\_\_\_\_ Telegraph Company.

—Incorporated.—

\_\_\_\_\_ Offices in America. Cable Service to All the World.

\_\_\_\_\_, President. \_\_\_\_\_, General Manager.

Receiver's No.		Time Filed		Check
_____		_____		_____

Send the following message subject to the terms on back hereof, which are hereby agreed to.

\_\_\_\_\_, 19—.

To \_\_\_\_\_,  
\_\_\_\_\_.

_____	_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____	_____

Conditions on back of same.

All messages taken by this company are subject to the following terms which are hereby agreed to.

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeated message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for nondelivery, of any unrepeated message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for nondelivery of any repeated message, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption

in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the nondelivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. Messages will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

7. No employé of the company is authorized to vary the foregoing.

\_\_\_\_\_, President.                      \_\_\_\_\_, General Manager.

Money transferred by telegraph and cable to all the world.

1. See ante, vol. 1, ch. 19.

**6256. Telegram—Another form.**

—— Telegraph-Commercial Cables.

——, President.

TELEGRAM.

Counter No.

Time Filed.

Check.

The —— Telegraph-Cable Company (incorporated) transmits and delivers this message subject to the terms and conditions printed on the back of this blank.

5B—8740

Design Patent No. 40529.

Send the following message, without repeating, subject to the terms and conditions printed on the back hereof, which are hereby agreed to.

——, 19—.

To ——,  
——.

—— ——— ——— ——— ——— ——— ———  
—— ——— ——— ——— ——— ——— ———

The —— Telegraph-Cable Company (Incorporated).

Transmits and delivers the within message subject to the following terms and conditions.

To guard against mistakes or delays, the sender of a message should order it repeated; that is, telegraphed back to the originating office for comparison. For this, one-half the regular rate is charged in addition. It is agreed between the sender of the message written on the face hereof and the —— Telegraph-Cable Company, that said company shall not be liable for mistakes or delays in the transmission or delivery, or for nondelivery, of any unrepeatd message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for nondelivery, of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages. And this company is hereby made the agent of the sender, without liability, to forward any message over the



lines of any other company when necessary to reach its destination.

Correctness in the transmission of messages to any point on the lines of the company can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon, at the following rates, in addition to the usual charge for repeated messages, viz: one per cent. for any distance not exceeding 1,000 miles, and two per cent. for any greater distance.

No responsibility regarding messages attaches to this company until the same are presented and accepted at one of its transmitting offices; and if a message is sent to such office by one of this company's messengers, he acts for that purpose as the agent of the sender.

Messages will be delivered free within the established free delivery limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery.

This company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

This is an unrepeatd message and is transmitted and delivered by request of the sender under the conditions named above. Errors can be guarded against only by repeating a message back to the sending station for comparison.

The above terms and conditions shall be binding upon the receiver as well as the sender of this message.

No employé of this company is authorized to vary the foregoing.

\_\_\_\_\_, President.

\_\_\_\_\_, Vice President and General Manager.

\_\_\_\_\_, Second Vice President.

\_\_\_\_\_, Third Vice President.

—— Telegraph—fastest service in the world.

## 6257. Night letter.

—— Telegraph-Cable Company.

NIGHT LETTERGRAM.

Counter No.

Time Filed.

Check.

The —— Telegraph-Cable Company (Incorporated) transmits and delivers this night lettergram subject to the terms and conditions printed on the back of this blank.

\_\_\_\_\_, President.

Independent—Competitive—Progressive.

Send the following night lettergram, without repeating, subject to the terms and conditions printed on the back hereof, which are hereby agreed to.

To \_\_\_\_\_,

\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_

Conditions on back of same.

The —— Telegraph-Cable Company (Incorporated) transmits and delivers the within night lettergram subject to the following terms and conditions:

The company will receive, not later than midnight, night lettergrams, written in plain English, to be transmitted only for delivery not earlier than the morning of the next ensuing business day, at rates as follows: The standard day rate for a ten-word day message shall be charged for the transmission of a night lettergram containing fifty words or less, and one-fifth of the standard day rate for a ten-word day message shall be charged for each additional ten words or less in such night lettergram.

To guard against mistakes or delays, the sender of a night lettergram should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeated night lettergram rate is charged in addition. Unless otherwise indicated on the face of this blank, this is an unrepeated night lettergram, and is paid for, or agreed to be paid for, as such, in consideration whereof it is agreed between the sender of the night lettergram and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for nondelivery, of any unrepeated night lettergram, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for nondelivery of any repeated night lettergram, beyond fifty times the sum received for sending the same, unless specially valued and insured; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in obscure night lettergrams.

2. Correctness in the transmission of night lettergrams to any point on the lines of the company can be insured by contract in writing, stating agreed amount of risk, and payment of premium thereon, at the following rates, in addition to the usual charge for repeated night lettergrams, viz: one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance.

3. This company is hereby made the agent of the sender, without liability, to forward this night lettergram over the lines of any other company when necessary to reach its destination.

4. Night lettergrams will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning night lettergrams until the same are accepted at one of its transmitting offices, and if such a night lettergram is sent to such office by one of the company's messengers, the latter acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within thirty days after the night lettergram is filed with the company for transmission.

In further consideration of the reduced rate for this special "night lettergram" service, the following special terms are hereby agreed to:

A. Night lettergrams may at the option of the telegraph company be mailed at destination to the addressees and the company shall be deemed to have discharged its obligation in such cases with respect to delivery by mailing such night lettergram at destination, postage prepaid.

B. Night lettergrams shall be written in plain English. Cipher or code language is not permitted.

7. The above terms and conditions shall be binding upon the receiver as well as the sender of this night lettergram.

8. No employé of the company is authorized to vary the foregoing.

This is an unrepeatd night lettergram and is transmitted and delivered by request of the sender under the conditions named above. Errors can be guarded against only by repeating the night lettergram back to the sending station for comparison.

\_\_\_\_\_, President.

\_\_\_\_\_, Vice President and General Manager.

\_\_\_\_\_, Second Vice President.

\_\_\_\_\_, Third Vice President.

\_\_\_\_\_, Telegraph—fastest service in the world.

## 6258. Day letter.

The \_\_\_\_\_ Telegraph Company.  
Incorporated.

\_\_\_\_\_ Offices in America.

Cable Service to all the World.

\_\_\_\_\_, President.

\_\_\_\_\_, General Manager.

Receiver's No. |

Time Filed |

Check

Send the following day letter subject to the terms on back hereof, which are hereby agreed to:

\_\_\_\_\_, 19\_\_\_\_.

To \_\_\_\_\_,

\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Conditions on back of same.

## DAY LETTER.

All day letters taken by this company shall be subject to the following terms which are hereby agreed to:

The — telegraph company will receive day letters, to be transmitted at rates lower than its standard day message rates, as follows: one and one-half times the standard night letter rate shall be charged for the transmission of fifty (50) words or less, and one-fifth of the initial rate for such fifty words shall be charged for each additional ten (10) words or less.

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeatd message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeatd message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery, or for nondelivery, of any unrepeatd message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for nondelivery of any repeated message, beyond fifty times the sum received for sending the same, unless specially valued; nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in obscure messages.

2. In any event the company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the nondelivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. Messages will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices, and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

In further consideration of the reduced rate for this special "day letter" service, the following special terms are hereby agreed to:

A. Day letters may be forwarded by the telegraph company as a deferred service and the transmission and delivery of such day letters is, in all respects, subordinate to the priority of transmission and delivery of regular day messages.

B. Day letters shall be written in plain English. Code language is not permitted.

C. This day letter may be delivered by the telegraph company by telephoning the same to the addressee, and such delivery shall be a complete discharge of the obligation of the telegraph company to deliver.

D. This day letter is received subject to the express understanding and agreement that the company does not undertake that a day letter shall be delivered on the day of its date absolutely and at all events; but that the company's obligation in this respect is subject to the condition that there shall remain sufficient time for the transmission and delivery of such a message on the day of its date during regular office hours, subject to the priority of the transmission of regular day messages under the conditions named above.

No employé of the company is authorized to vary the foregoing.

—, President.

—, General Manager.

### 6259. Night message.

The — Telegraph Company (Incorporated).  
 — Offices in America. Cable Service to All the World.  
 —, President. —, General Manager.

Receiver's No.	Time Filed	Check

Send the following night message subject to the terms on back hereof, which are hereby agreed to.

To —, —, 19—.

—  
 —  
 —  
 —  
 —  
 —  
 —  
 —

Conditions on back of same.

#### NIGHT MESSAGE.

All night messages taken by this company are subject to the following terms which are hereby agreed to.

The — telegraph company will receive messages, to be sent during the night, for delivery not earlier than the morning of the next ensuing business day, at reduced rates.

To guard against mistakes or delays, the sender of a message should order it repeated, that is, telegraphed back to the originating office for comparison. For this, one-half the unrepeatd message rate is charged in addition. Unless otherwise indicated on its face, this is an unrepeatd message and paid for as such, in consideration whereof it is agreed between the sender of the message and this company as follows:

1. The company shall not be liable for mistakes or delays in the transmission or delivery or for nondelivery, of any unrepeatd message, beyond the amount received for sending the same; nor for mistakes or delays in the transmission or delivery, or for nondelivery of any repeated message, beyond fifty times the sum received for sending the same, unless specially valued;

nor in any case for delays arising from unavoidable interruption in the working of its lines; nor for errors in cipher or obscure messages.

2. In any event the company shall not be liable for damages for any mistakes or delay in the transmission or delivery, or for the nondelivery of this message, whether caused by the negligence of its servants or otherwise, beyond the sum of fifty dollars, at which amount this message is hereby valued, unless a greater value is stated in writing hereon at the time the message is offered to the company for transmission, and an additional sum paid or agreed to be paid based on such value equal to one-tenth of one per cent. thereof.

3. The company is hereby made the agent of the sender, without liability, to forward this message over the lines of any other company when necessary to reach its destination.

4. Messages will be delivered free within one-half mile of the company's office in towns of 5,000 population or less, and within one mile of such office in other cities or towns. Beyond these limits the company does not undertake to make delivery, but will, without liability, at the sender's request, as his agent and at his expense, endeavor to contract for him for such delivery at a reasonable price.

5. No responsibility attaches to this company concerning messages until the same are accepted at one of its transmitting offices; and if a message is sent to such office by one of the company's messengers, he acts for that purpose as the agent of the sender.

6. The company will not be liable for damages or statutory penalties in any case where the claim is not presented in writing within sixty days after the message is filed with the company for transmission.

7. No employé of the company is authorized to vary the foregoing.

\_\_\_\_\_, President. \_\_\_\_\_, General Manager.

Money transferred by telegraph and cable to all the world.

#### 6260. License to construct telegraph or telephone lines.

Know all men by these presents, that I, \_\_\_\_\_ of \_\_\_\_\_, state of



—, for the consideration hereinafter expressed, do hereby grant unto the — telephone company of —, state of —, the right to erect, construct, operate and perpetually maintain its lines of telephone and telegraph, with all necessary poles, wires and appurtenances, including guy and brace poles, over and upon the following described real property, to wit: (description of property), and also the right to trim or fell any trees along the said lines necessary to keep the wires clear thereof for a space of at least — inches; and also the right to attach all necessary guy wires to trees along said line.

In consideration of the rights herein granted, the said — telephone company, by its acceptance thereof, hereby agrees to pay the sum of — for each and every pole located on said premises, payable whenever and as soon as the number of poles to be so placed shall be ascertained.

In witness thereof, I have hereunto set my hand this — day of —, 19—.

(Acknowledgment.)

\_\_\_\_\_.

#### 6261. Residence telephone contract.

This agreement made and entered into this — day of —, 19—, by and between —, party of the first part, and — telephone company, party of the second part, witnesseth:

That in consideration that said — telephone company, second party herein, construct and put into operation a rural telephone system and exchange in — township and other adjoining and adjacent townships in — and — counties, state of —, and issue to said first party one fifty-dollar share of the capital stock of said company, he, the first party, does hereby subscribe for said one fifty-dollar share of the capital stock of said company, to be paid for in monthly instalments of ten dollars each as called in by the board of directors of said company. And the said first party further agrees, in consideration of the covenants and agreements herein contained, that he will rent one residence telephone of said company for the period of three years, from the time when the said exchange shall be so opened for business and to pay therefor at the rate of — dollars per year, payable quarterly in advance.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_

1. Co-operative Tel. Co. v. Katus, 140 Mich. 367, 112 Am. St. 414.

### 6262. Telephone traffic agreement.

This agreement, made this \_\_\_\_ day of \_\_\_\_, 19\_\_, by and between the \_\_\_\_ telephone company, incorporated under the laws of the state of \_\_\_\_, its successors and assigns, first party, and \_\_\_\_ of \_\_\_\_, county of \_\_\_\_, and state of \_\_\_\_, its successors and assigns, second party, witnesseth:

Whereas, the first party now owns and operates telephone exchanges and toll lines throughout the states of \_\_\_\_, \_\_\_\_ and \_\_\_\_, connecting with the lines of the \_\_\_\_ company and its affiliated companies, and

Whereas, the second party now owns and operates or intends to build, own and operate a telephone exchange or exchanges in the territory shown within the black line on the blue print attached marked "Exhibit A" (blue prints to be attached and marked), and

Whereas, both parties hereto deem it of advantage to connect together their respective telephone systems, in order to provide their patrons increased telephone facilities;

Now, therefore, the parties hereto for themselves, their successors and assigns, and in consideration of the covenants hereinafter specified to be performed and observed by each of them, and for other valuable considerations moving from each of said parties to the other, receipt of which is hereby acknowledged by each of the parties hereto, agree with each other as follows:

First. The second party will thoroughly develop the telephone business in the territory shown within the black line on the blue print marked "Exhibit A," and for this purpose will maintain and operate an exchange or exchanges at the points indicated on said print.

Second. The first party will, at this time, connect its toll lines with the telephone system operated by the second party at the following point or points: \_\_\_\_.

The first party shall at all times during business hours have the right to enter the office or offices of the second party for the purpose of inspecting

its apparatus and property, and to connect with the exchange or exchanges of the second party any of its toll lines now or hereafter built.

Each of the parties will make the proper switchboard or other connections and perform the necessary operating to permit of direct communication between the customers of the second party within the territory shown within the black line on Exhibit A and the customers of the first party connected with its system or those of its connecting companies as may be requested by the other party under the terms of this agreement.

Second party shall display such advertising signs as may be furnished by first party at all of its pay stations and shall at all times furnish to its customers within the territory herein first mentioned access to the lines of the first party, and shall, upon demand of any of said customers so to do, promptly perform the necessary operating to permit such customer to use the lines of first party.

Second party shall not, without the written consent of the first party, make any switchboard or other connection between the toll lines of the first party and the toll lines of any other corporation, firm or individual.

For communications originating on the lines of the second party with points outside said exchange or exchanges and terminating upon the lines of the first party or its connecting companies, the second party will charge and collect from its customers and remit to the first party at ———, such through tolls as may be established from time to time by the first party, and, in consideration of making such connections and acting as toll agents for first party within said territory, shall be entitled to receive, from the first party, the following commissions:

On all messages for which rates are quoted from time to time in the ——— telephone company's tariff book, ——— per cent. of each originating toll, but not more than ——— cents nor less than ——— cents for any paid minute.

The minimum commission of ——— cents for any paid minute shall not apply to any business for which a rate of less than ——— cents is quoted for ——— minute period.

On all messages for which rates are quoted in the ——— company's tariff book, ——— per cent. of each originating toll, but not more than ——— cents for any one message.

The first party shall have the right to determine from time to time the classification of such business and shall furnish second party with data wherewith to correct or make changes in such tariff books. The second party shall keep proper accounts of its business with the first party and shall at all times on demand exhibit them and its vouchers to the first party.

Neither party will charge anything in excess of the regular toll rates herein provided for, except in the event that it is necessary to employ a messenger to notify the party called for. In this case, after consent is obtained from the originating office, the actual amount paid may be reported and will be allowed in making settlements to the party employing the messenger.

The second party shall, on or before the 15th day of the month of any term herein, remit to the first party any balance accruing unto first party for tolls earned during any month preceding and during which said tolls will have been earned or be due first party.

It is further agreed that if the first party finds it desirable or necessary, on account of the amount of business or the nature of the service, to establish a separate switchboard and employ its own operators for the handling of the business interchanged under this agreement, it shall have the privilege of so doing, in which case the commission to be paid to the second party shall be reduced to an amount equal to ——— per cent. of the commission provided above.

Third. Both parties shall construct, equip, maintain and operate their respective plants in such manner and with such efficiency as not to interfere with nor impair the quality of service furnished through the lines connecting as aforesaid.

Fourth. The first party, if requested by the second party, will deliver to the second party within a reasonable time at ———, ——— sets of telephones (each consisting of a receiver, transmitter and induction coil) of the standard form furnished by the ——— telephone company, which shall be used only within said territory as shown within the black line on Exhibit A for exchange and toll purposes, for the use of which the second party shall pay to the first party a rental at the rate of one dollar per annum for each set, payable in equal monthly payments in advance, at the office of the first party in ———. At the termination of this contract, such instruments so leased shall be returned by second party to first party at ———.

Fifth. The first party is to assume and pay any and all taxes on the toll lines owned and operated by it in said territory, and the second party is to assume and pay any and all taxes on, or on account of, or by reason of the instruments leased or its own share of business done under this contract.

Sixth. If either party shall fail to pay any sum due hereunder or owing under the terms of this contract for ——— (——) days after the same shall become due and payable, or violate any other terms of this contract and fail to remedy and repair same for ——— days after written notice thereof from the other party, or if either party shall become bankrupt or insolvent, the other party may, if it shall so elect, by written notice to the delinquent party (or those in charge of its principal office), terminate this contract.

Seventh. The parties hereto mutually agree that either shall be entitled to specific performance by the other of the reciprocal covenants herein providing for continuity of connection between the parties during the period hereof, except as modified by section six hereof, and such covenants shall as to the other subjects herein be construed as independent covenants; and whenever said second party for any purpose desires to assert a breach or non-performance of any clause in this contract by said first party, the same shall be done only where a notice in writing of such breach has been given to said first party at ———, within ——— days following such breach, if any.

This contract shall remain in full force until the first day of ———, Nineteen Hundred and ——— (19—), unless sooner determined as herein provided, and thereafter shall be self-renewing for periods of ——— (——) months, unless written notice of the intent to terminate be given by either party to the other ——— (——) days prior to the expiration of the term next ending.

In witness whereof, the parties hereto have caused this contract to be executed on the day and year first above mentioned.

— Telephone Company,

By ————,  
Vice President.

Attest :

———,  
Secretary.

By ————,  
President.

Attest :

———,  
Secretary.

### 6263. Exchange subscription contract.

—, 19—.

To — Telephone Company :

Please install in the premises at — a telephone station connected with your local exchange at — by — line and furnish service therewith on terms as follows :

The station provided for herein is to be a part of said exchange, subject to the rules of the — telephone company for the management thereof, and is to be used only by the subscriber and his agents or employés when engaged in the subscriber's business only and not for receiving, transmitting or delivering any message or communication in respect of which a consideration has been or is to be paid to any party other than said company, except as may be permitted by said rules (nor in any way in competition with said company in its present or future business). Said station is not to be removed from said premises or connected with any instrument or apparatus not furnished by the company. The number of said station may be changed by said company at any time as the exigencies of the business may require.

A local message is a communication of five minutes or less duration between subscribers' stations within the same exchange limits. When the duration or number of messages from a party

line subscriber's station prevents an equitable proportionate use of other subscribers' stations associated on the same line, the company may terminate the contract of such subscriber by giving ten days' written notice.

The company shall not be required to furnish nor be held liable for failure to continue to furnish the telephone service called for in this contract, where, for any reason, it has been unable to secure or continue in use its public or private rights of way over a direct route then deemed expedient by the company.

In view of the liability to errors in transmitting speech by telephone and the impossibility of fairly fixing the cause thereof, all risks of service are assumed by the subscriber, except that for any complete failure of service of which the company is notified in writing and which continues for more than twenty-four (24) hours thereafter, a pro rata abatement shall be made.

In case of any default of payment for —— (——) days, or for any breach of this contract, the company may disconnect or remove said station, but such action shall not affect the subscriber's liability for payment hereunder for the full term of this contract.

This contract may be terminated at the end of any of the terms for which the same shall be in force, by previous written notice from either party to the other, or may be terminated by the subscriber upon written notice to the manager at any time upon the payment of rental and other charges earned in full to the date of surrender of the equipment and in addition one-half of the unearned rental for the balance of the term then existing.

The within agreement becomes binding upon the company when accepted by its manager. Its terms cannot be waived or varied by any canvasser or other person, except on written authority of the general manager, for which the undersigned agrees to pay —— in advance, at the rate of \$—— per annum from date of connection, and also to pay regular rates for all toll and long-distance calls from station monthly, upon presentation of bills therefor.

The primary term of this contract is one year from the date of

connection of instruments, and thereafter it shall be self-renewing for consecutive terms of three months each.

Accepted for the company:

\_\_\_\_\_,

Manager.

\_\_\_\_\_,

Subscriber.

Style of equipment desired \_\_\_\_.

Directory listing \_\_\_\_.

Distance by route of wire beyond corporate limits \_\_\_\_ miles.

Where payable \_\_\_\_.

Date connected \_\_\_\_.

Contract taken by \_\_\_\_.

1. As to public service corporations see ante, vol. 1, ch. 19.

**THEATER AND LYCEUM CONTRACTS.****6265. Contract between manager and artist.**

This agreement made and entered into the — day of —, 19—, by and between —, party of the first part, and —, party of the second part, witnesseth:

That the party of the first part hereby engages the exclusive services of the party of the second part as an (here state kind of services to be performed) at a weekly salary of \$— for the theatrical season of the play of —, which season is to commence on or about the first day of —, 19—, said engagement being subject to the — notice of cancelation hereinafter mentioned.

And it is further agreed, in consideration of the premises, that the party of the second part will not, during the term of this agreement, exercise his professional skill and talents as aforesaid in public within the city of — (or otherwise state the limit to which restriction is intended to be confined) either for compensation or gratuitously, and either upon his own account or for another employer or establishment, without the consent in writing of the party of the first part obtained; provided, however, that the party of the second part may, at any time and as often as he thinks fit, perform gratuitously at any entertainment given for the benefit of charity.

The number of performances to be given each week shall be according to the custom of the places of amusement in cities and towns in which the party of the second part may be required to appear, and should the management be unable to give a performance or performances through accident, sickness, delay occasioned by reason of common carrier by rail or water, riot, fire, public calamity or other unforeseen cause, not attributable to the party of the first part and time of performance is lost, then the party of the second part shall not receive any salary for said time in which performances are not given.

The party of the second part agrees to render his services as required at such theater, opera houses, places of amusement and



halls as may be selected by the party of the first part, playing the part for which he may be cast, in a correct and painstaking manner, which at all times must be satisfactory to the party of the first part or his representative, paying strict attention to "make-up" and the proper dressing and costuming of the character or part assigned, shall furnish costumes for the same and conform to and abide by all rules and regulations adopted by the party of the first part in respect of such matters.

The party of the first part may cancel this agreement at any time before the opening of the season if he shall be dissatisfied with the party of the second part at rehearsals and need assign no reason therefor. No compensation is to be paid said party of the second part for rehearsals whether the same are before the opening of the season or during the season, the first party reserving the right to call a rehearsal at any time, the party of the first part to have the right to dismiss the party of the second part without notice if at any time he neglects his part or plays the same in an unsuitable manner.

Party of the second part to furnish at his own expense, according to the directions and to the satisfaction of the party of the first part, all costumes which may be required in the part or parts assigned, and agrees to loan to the party of the first part such costumes or any portion thereof for the use of such substitute as the party of the first part may select to play said part or parts, at any time during the continuance of this agreement, when for any reason the party of the second part cannot play or perform.

The party of the second part agrees to obey the rules, orders and directions of the manager and his representative, to be promptly on hand at all rehearsals, to be at such railroad or steamboat stations on the departure of the company as shall be designated, and to travel with the company by such routes and conveyances and at such times as the party of the first part may designate, and the party of the first part is not to be liable for the loss, damage or miscarriage of any baggage belonging to the party of the second part, although he assumes control over the same for the purposes of transportation.

The party of the first part shall make such rules and regulations as are necessary for the conduct and management of the party of the second part, and if same are violated or if the party of the second part fails to obey the party of the first part or his representative, or if by speech, act or conduct does that which does or tends to injure the manager, his business or company on or off the stage, the party of the first part shall have immediate right to discharge the party of the second part without notice, in which event the salary shall be paid only pro rata according to the performance played, up to the time of the discharge.

The said party of the second part further agrees that if said party of the first part shall become satisfied that the said party of the second part is incompetent to perform the duties for which said party of the first part has contracted in good faith, or is inattentive to business, careless in rendering of characters, or guilty of any violation of the rules, then the said party of the first part may annul this contract by giving — week's notice to said party of the second part to that effect, and said party of the second part shall have no further claim upon said party of the first part.

The party of the first part to pay for the second party's transportation while the company is en route and to carry his baggage up to two hundred pounds weight. Transportation as herein specified does not include fare to the place of opening performances, fare after the final performance under the contract, sleeping or parlor car fare, nor expense of carriage hire to and from hotel, station or theater.

Any original matter in the way of lines, lights, scenes, music or business which may be introduced in the performance by the party of the first part, shall, on the election of the party of the first part, become a part of the performance thereafter, for which no extra compensation shall be paid, and which may be used by any one succeeding second party to the part. And the party of the second part shall furnish to the party of the first part such photographs as may be required, the same to be used in any way for the purpose of advertising the party of the second part and the attraction in which he appears. If for any reason the party

of the first part shall be unable to give a performance, or if the party of the second part shall be unable to appear on account of sickness, or if the company shall be laid off and not play, then there shall be deducted from second party's salary such a proportionate part thereof for the day or days so lost as is pro rata according to the salary for the week. The party of the first part reserves the right to lay off the company at such times as may seem advisable to him and for which period or periods no salary is to be paid to the party of the second part.

This contract may be terminated at any time by either party's giving to the other — weeks' notice in writing of the intention so to do, without assigning any reason or cause therefor.

In case of notice to the party of the first part it shall be in writing and delivered to him or his representative in hand, but in the absence of both from the company for a period of over two days, then notice may be mailed properly addressed to the principal office of the party of the first part. In case of notice to the party of the second part, it shall be in writing and delivered in hand to the party notified, or left in the place in the theater where the party is playing, provided for the deposit of letters addressed to members of the company, or upon the call-board of said theater, or by mail to the theater where the company is playing, properly addressed to the party of the second part. The commencement of the — weeks shall be from the time the notice is actually received by either party hereto.

In the event this agreement is canceled by a — weeks' notice from the party of the first part, he agrees to pay the transportation of the party of the second part from whatever place he may be at the time of receipt of notice to —.

In witness whereof, the said parties hereunto set their hands the day and date first above mentioned.

#### 6266. Agreement between theater and company.

This agreement, made and entered into this — day of —, 19—, by and between —, party of the first part, and —, of —, manager of the — company, party of the second part.

Witnesseth, that the said party of the first part agrees to play

the attraction of the said party of the second part an engagement of one week, which shall include the usual evening, matinee and holiday performances at the ——— theater, commencing on the ——— day of ———, 19—, giving the said party of the second part ——— per cent. of the gross receipts of each evening and matinee performance that said company may play during the above-mentioned engagement, and said party of the second part hereby agrees to play said attraction at said theater on the said terms during the above-mentioned time.

A settlement shall be made during each performance from the box office statement controlled by tickets in the doorkeeper's boxes, the party of the first part to furnish all tickets and pass-out checks, to have the exclusive right to sell books and photographs, unless otherwise agreed, and free admission shall be under mutual control.

The party of the first part reserves the right to furnish all tickets and pass-out checks if he so desires.

It is further agreed that during this engagement no performance or rehearsal other than herein stipulated shall take place in the above-mentioned building without the consent of the said first party, first obtained in writing.

The regular officers of the house are to have control of the doors and box office under the supervision of both parties to this contract, who are to have free access to the box office at all times, the keys of ticket boxes to be held by the party of the first part.

A settlement to be made after the first act, both from the ticket seller's statement (which is to be furnished previous to counting the tickets taken at doors) and the box count.

It is also agreed that free admission shall be mutually agreed upon on arrival of advance agent.

The party of the second part agrees to furnish the services of ——— and company, said company to be composed of artists, satisfactory to the party of the first part, a list of whom shall be furnished to the party of the first part at any time on application, and to give the entire performance, subject to the rules of the theater, in a manner satisfactory to the party of the first part during the time stated, to pay all royalties and furnish all perishable proper-

ties, such as eatables, drinkables, live animals of any kind, red fires, cigars, blank cartridges, powder, caps, or any article required in the play or act which is destroyed during performance, and any extra stage hands required for the production of plays or acts, supernumeraries and extra ballet, calcium lights, special scenery, mechanical effects and music necessary for said performances.

And said party of the second part also agrees to deliver to the party of the first part, two weeks in advance, prepaid free of all charge, the following printing, to wit:

- Complete stands of pictorial printing.
- Lithographs of the same to be full sheets.
- Stretchers, —— one-sheets, —— half-sheets.
- Eight-sheets for special locations.

Said printing to contain proper reference to the dates and times and place of said performances.

It is further agreed that if the party of the second part fails to furnish the attraction herein provided for, or if the same is not composed of artists satisfactory to the party of the first part, or does not deliver to the party of the first part the stipulated printing within the time agreed, or shall play said attraction at any other theater in —— within the time from the signing of this contract until the fulfilment of the same, or for a period of four weeks after the engagement herein provided for, without the written consent of the party of the first part having first been obtained, that in the event of the violation of any of the aforesaid stipulations, the party of the second part shall pay to the party of the first part —— dollars as and for liquidated damages therefor, and the party of the first part shall have the right to cancel this contract at any time and claim said damages for the violation of any of the aforesaid causes, said amount, to wit: —— dollars agreed upon as liquidated damages being a fair and adequate amount for the violation of any of said stipulated clauses and intended to fairly cover the loss and damage occasioned said party of the first part for a breach thereof.

It is further agreed and understood by the parties hereto that, for any violation of the above-mentioned covenants by either

party (acts of Providence excepted) he or they shall forfeit or pay over to the other party the sum of — dollars on demand as liquidated damages.

Should fire, war, riot, legal process or any other unforeseen event make it impossible for the party of the first part to carry out the terms of this agreement he shall not be responsible for damages of any kind arising therefrom.

The theater and stage shall be entirely at the disposal of the party of the first part for Sunday performances. It is also agreed that the property, scene plots and copy for house programs shall be sent by the said party of the second part to the said party of the first part at least two weeks in advance.

The box office and the sale of the tickets shall be under the exclusive control of the party of the first part.

In witness whereof, the said parties hereunto set their hands the day and date above mentioned.

#### 6267. Contract for lyceum entertainments.

This agreement made and entered into this — day of —, 19—, by and between — lyceum bureau of —, party of the first part, and —, — and —, committee of lyceum course of —, state of —, for the season of 19— and 19—, parties of the second part, witnesseth:

That in consideration of the covenants and agreements hereinafter contained and the payments hereinafter to be made by second parties to first party, said first party hereby agrees to furnish the second parties the following entertainments at and for the sums set opposite the names of said entertainers:

— Concert Company .....	\$100.00
— Jubilee Singers .....	75.00
— Magician .....	50.00
— Lecturer .....	50.00
— Entertainer .....	50.00

That said entertainments are to be given at — during the lyceum season of 19— and 19—, at such dates during said time as may be selected at the option of said first party.

Second parties hereby agree to furnish hall or opera house and to properly heat and light same for said entertainments without

any expense to first party, and at the close of each of said entertainments second parties agree to pay to first party or any person or persons authorized by first party to receive same the sum above mentioned to be paid for such entertainment. First party further agrees to furnish not later than one month prior to the date set for each entertainment —— lithographs and —— distribution circulars free of charge to second parties.

It is further understood and agreed that said first party shall not be liable for damages if, because of sickness, accident, railroad detentions or any unavoidable or legitimate cause, any of said entertainers, persons or companies engaged fails to keep engagements, and any such failure shall not affect this contract as to unfilled dates, but in case of such failure a new date will be given the same season if possible, or the first party will, at its own option, either deduct from the above consideration the price of the unfilled date or furnish a substitute entertainment of the same booking price.

In witness whereof, etc.

\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.  
\_\_\_\_\_.

**TRUSTS.****6270. Of undivided share of purchased land.**

Indenture made the — day of —, between — of —, first party, and — of —, second party: Whereas by deed dated —, 19—, and recorded with — county deeds, book —, page —, — of — conveyed to the said first party a certain parcel of land with the buildings thereon, situate on the — side of — street, in the said town of —, and numbered — on said street; and whereas, the whole consideration or sum paid by the said first party for the purchase thereof was — dollars, of which sum one-half part was the money of the said first party and one-half part was money belonging to the said second party, and said purchase was made by said first party as to one equal undivided half part thereof as a trustee for and on behalf of the said second party, as the said first party doth admit and declare:

Now this indenture witnesseth that in consideration of the premises it is hereby agreed and declared by and between the said parties hereto, that the said first party, his heirs and assigns doth and shall stand seized of one undivided half part of the land and premises with the appurtenances thereof, conveyed by the deed hereinbefore recited, in trust for the said second party, his heirs and assigns forever, and will convey, lease or dispose of the same in such manner as he or they shall direct.

In witness, etc.

1. See ante, vol. 2, §§ 1212, 1256, 1322, 1325.

**6271. By trustees who have taken mortgage for several lenders.**

Memorandum made this — day of —, 19—, between — and — of — (the trustees), of the first part; — of — of the second part; — of — of the third part; and — of — of the fourth part.

Whereas by an indenture bearing even date with these presents, — of — (mortgagor), in consideration of — dollars paid by the said trustees out of money herein expressed to belong to



them on joint account, the said mortgagor conveyed certain land situate at —, county of —, therein particularly described, to said trustees, to secure the payment to them of — dollars, with interest thereon in the meantime at the rate of — per cent. per annum:

And whereas the aforesaid sum of — dollars was in fact contributed by the several persons, parties hereto of the second, third and fourth parts, and in the proportions or sums following, that is to say: — dollars by the said first party; — dollars by the said second party; and — dollars by the said third party.

And whereas the said trustees have, at the request of the several persons contributing as aforesaid, agreed to make and execute such declaration of trust as is hereinafter contained:

Now these presents witness that, pursuant to said agreement and in consideration of the premises, the said trustees hereby declare that they and the survivor of them, and their executors, administrators and assigns, shall henceforth stand possessed of and interested in the said principal sum of — dollars secured by the above mortgage, and the interest thereon, upon the trusts following, that is to say: Upon trust out of the moneys which shall be received from time to time under the said mortgage in the first place to pay thereout all the costs, charges and expenses of and incident to the demanding, recovering and enforcing payment of the said moneys, and of the execution of the trusts hereof: and subject thereto in trust ratably and *pari passu* for the several persons by whom the said sum of — dollars was contributed, or their respective executors, administrators or assigns, according and in proportion to the several sums so contributed and advanced by them respectively as aforesaid: Provided always, that the power of sale and other powers vested by statute in mortgagees, except powers of leasing and agreeing to lease or let, shall be forthwith exercisable and put in force upon the written request of any of the several persons by whom the said principal sum of — dollars was so contributed as aforesaid, or of any other person or persons for the time being entitled to the whole or a part or share of any of the several sums so contributed as aforesaid.

In witness, etc.

**6272. Declaration of trust in personal property.**

Know all men by these presents, that I, — of —, in consideration of —, hereby acknowledge and declare that I am possessed of the following personal property and trust (here describe property), for the benefit and advantage only of — of —, the same having been purchased with moneys of the said —, and all the income therefrom from henceforth accruing, or to become due, is held only in trust for the said —, and I, for myself, my executors, administrators and assigns, hereby covenant with said —, his executors, administrators and assigns that I will, at any time hereafter at the request and expense of said —, assign and transfer the said property to him or his order.

In witness, etc.

**6273. Declaration of trust in stocks by person in whose name they have been purchased for another.**

Indenture made the — day of —, between — (the trustee), of the one part, and — of —, the beneficiary: Whereas the beneficiary has lately transferred, or caused to be transferred, into the name of said trustee, the stocks and shares specified in the schedule hereto annexed, and whereas it was agreed, prior to the date of said transfers, that the trustee should execute a declaration of trust:

Now these presents witness as follows: The trustee hereby declares that he holds the stocks and shares specified, and all dividends accrued or to accrue upon the same, upon trust for the beneficiary, his executors, administrators and assigns, to transfer, pay and deal in such manner as he or they shall from time to time direct. The beneficiary will at all times hereafter keep indemnified the trustee, his executors or administrators against all liabilities which he or they may incur by reason of such stocks or shares having been so transferred into the name of the trustee, and in particular will punctually pay all calls and demands which the trustee may be liable to pay in respect of any of said shares not fully paid up, and all costs and expenses incurred by the trustee in the execution of said trust. During the continuance of the trust the beneficiary will pay to the trustee

the sum of —— dollars per annum, as remuneration for his services as such trustee as aforesaid.

In witness, etc.

(Signatures of both parties.)

#### 6274. Declaration of trust in shares of stock.

Indenture made the —— day of —— between —— of —— (the trustee), of the one part, and —— of ——, entitled to the shares of bank stock specified in the schedule hereto annexed, the beneficiary.

Whereas said shares of stock were transferred to the said trustee as a nominee of the beneficiary and it was agreed prior to the date of such transfers that the trustee should execute a declaration of trust to the beneficiary.

Now these presents witness that:

The trustee hereby declares that he holds the shares specified in the schedule hereto and all dividends and interest accrued or to accrue upon the same in trust for the beneficiary, his executors, administrators and assigns, and agrees to transfer, pay and deal with said shares of stock, dividends and interest in such manner as he or they shall from time to time direct.

The trustee will, at the request of the beneficiary, his executors, administrators or assigns, attend all meetings of stockholders of the companies issuing said shares, and will vote at such meetings in such manner as the beneficiary, his executors, administrators or assigns shall have previously directed in writing, and further will, if so required by the beneficiary, his executors, administrators or assigns, execute all proxies necessary or proper to enable the beneficiary, his executors, administrators or assigns to vote at any such meeting in place of the trustee.

The beneficiary will at all times keep indemnified the trustee, his executors or administrators against all liabilities which he or they may incur by reason of such shares of stock having been transferred into the name of the trustee, and will punctually pay all calls, assessments and other demands which the trustee may be or become liable to pay in respect of any of the shares

not fully paid up and all costs and expenses incurred by the trustee in the execution of the trusts herein declared.

In witness, etc., schedule above referred to.

(Signatures of both parties.)

**6275. Declaration of trust indorsed or annexed to deed of land made to the grantee as nominal purchaser.**

Whereas the purchase-money for the within-described land and premises was provided and paid by — of —, and he is the actual purchaser and the conveyance was made to me, — of —, as a trustee for the purchaser :

Now know all men by these presents that I, the said — of —, do hereby declare that I stand siezed of said land and premises within described in trust for the said — (purchaser), his heirs and assigns, and hereby agree to convey the same at his request and at his cost to him or to such person or persons at such time or times and in such manner as he, the said — (purchaser), shall direct or appoint.

In witness, etc.

(Signature of trustee.)

1. As to creation of trusts, see ante, vol. 1, §§ 502, 503.

**6276. Appointment of new trustee in place of deceased trustee under marriage settlement, to be indorsed thereon.**

Indenture made the — day of —, 19—, between the within-named —, surviving trustee, of the first part; the within-named —, and —, his wife, formerly —, within-named, of the second part; and — of —, new trustee, party of the third part. Whereas, a marriage between the two second parties was duly solemnized shortly after the execution of the within-written settlement; and whereas —, one of the trustees therein, died on the — day of —; and whereas the said surviving trustee, with the consent of the said second parties, is desirous of appointing the said — to be a trustee hereof in place of the deceased trustee :

Now this indenture witnesseth, that in the exercise of the power for this purpose contained in the within-written indenture, and of every other power them in this behalf enabling, said sur-

viving trustee doth hereby, with the consent of the said second parties, hereby testified, appoint the said — to be a trustee in place of the said deceased trustee, for the purposes hereof, or such of the same purposes as may be subsisting and capable of being carried into effect; and it is hereby agreed and declared that the said —, surviving trustee and the said —, new trustee, their executors, administrators and assigns, shall hold upon the trusts hereof the stocks, funds, securities, and property mentioned in the schedule hereto annexed, which now constitute the trust estate created hereby, which said property it is intended shall be forthwith, or as soon as may be, transferred, so as to be vested in the said surviving trustee and new trustee jointly, upon the trusts and subject to the powers and provisions applicable thereto, set forth herein.

In witness, etc.

#### 6277. Trust in personal property.

I, — of —, in consideration of —, hereby acknowledge and declare that I am possessed of — shares of the capital stock of the — company, numbered from one to —, inclusive, in trust, and for the only benefit and advantage of — of —, his executors, administrators and assigns, the same having been purchased with the moneys of the said —, and my name, as to the said shares, and all the income thereof, from henceforth to grow due or accrue, is used only in trust for the said —. And I, for myself, my executors and administrators, hereby covenant with the said —, his executors, administrators and assigns that I and they shall and will, at any time hereafter, at the request and costs of the said —, his executors, administrators and assigns, assign and transfer the said shares to him, or them, or order.

(Date.)

(Signature.)

#### 6278. Satisfaction of a deed of trust.

This deed, made this — day of —, 19—, between — of —, and — of —, of the state of —, parties of the first part; — of —, of the state of —, of the second part; and — of —, of the state of —, of the third part. Where-

as the said third party, in order to secure to the said second party the payment of the sum of — dollars, did, by his deed dated — day of —, 19—, recorded in the office of the clerk of the county of —, book —, page —, convey to the said first parties, their heirs and assigns, a certain parcel of real estate described in the said deed as follows, etc.; and the said sum of money having been fully paid to the said second party, said second party has requested that the estate conveyed by the said deed of trust to the said first parties in the said property hereinbefore mentioned and described be now released to him, the said third party: this deed, therefore, witnesseth, that for and in consideration of the premises, as well as of the sum of five dollars, the said first parties, with the consent of the said second party, signified by his signing and sealing this deed, do release to the said third party all his claim upon the said property.

Witness the following signatures and seals.

#### 6279. Voting trust agreement.

Memorandum of agreement made this the — day of —, 19—, by and between —, — and —, all of city of —, state of —, holders of certificates of stock in — company, parties of the first part, and — of city of —, state of —, trustees, parties of the second part, witnesseth:

That each of the holders of certificates of stock in said company agrees for himself and with each other to assign his shares of stock in said company to said — and —, as trustees, upon the following terms and conditions: The said shares of stock so assigned shall remain on deposit with said trustees for a period of — years from the date of this agreement, except as hereinafter provided. During the said period of — years, while said stock so remains on deposit with said trustees, said trustees shall have the power of voting said stock either in person or by proxy at all stockholders' meetings.

The depository herein designated shall issue to said stockholders so assigning their certificates of stock, beneficial certificates in such denominations and to such person or persons, corporation or corporations, as the depositor may direct, which said certificate shall be substantially in the following form:

The ——— trust company, having received on deposit ——— number of shares of the capital stock of said ——— company, each of the par value of ——— dollars, to be held in trust under the provisions of an agreement entered into by and between said stockholders and ——— and ———, trustees, to which agreement the holders of said certificates consent by receiving this certificate. Said trust company hereby certifies that ——— is entitled, subject to provisions of said agreement, to an undivided interest in said shares of stock so deposited, to an amount in the proportion which the number of shares of stock so deposited, and for which this certificate is issued, bear to the whole number of shares of said ——— company deposited as aforesaid. But the depositors of said shares of stock shall not have the right to vote said stock or any of it, the right of voting said shares of stock while they so remain on deposit as aforesaid, shall be exercised by said trustees or their successors. Upon the termination of said trust, the owners of said stock shall be entitled to receive from said trust company, upon surrender of this certificate, a certificate for their respective number of shares of the capital stock of said company, so deposited, unless his deposit certificate shall have been sold as provided in this agreement between the said stockholders and said trustees, and the purchase-money paid to said trustees, in which event the owners of said stock shall be entitled, by the surrender of this certificate, to receive his pro rata share of said purchase-money paid to said trust company. The interest in the stock so deposited and represented by this certificate is assignable only by transfer on the books of said trust company by the owner thereof or by proxy, upon the surrender of this certificate with proper assignment.

Dated this the ——— day of ———, 19—.

\_\_\_\_\_,  
By \_\_\_\_\_.

The certificates issued by said trust company may be transferred in person or by attorney, and new certificates issued by said trust company, and the deposit of said stock certificates and acceptance of the certificates of said trust company shall constitute such depositors parties hereto to the same effect as if they

had signed this contract; and upon the consent of — per cent. of the holders of stock so deposited, as appears from the books of said trust company, said trustees shall have the power to sell said stock for such consideration as the said — per cent. of said stockholders shall agree upon, and of such agreement said trust company shall be notified in writing by said trustees, and upon receipt of said notice said trust company shall deliver up the certificates so held by it to such trustees upon the receipt of the purchase-money therefor as shown by said notice.

It shall be the duty of said trustees to collect all dividends that may accrue upon said deposited stock evidenced by said beneficial certificates, and, after paying the expense of executing said trust and the charges of said trust company, pay the balance to the depositors or owners of said stock in such proportions as they may be entitled. If any of the trustees appointed herein should die, resign or refuse to act, the surviving trustees shall designate in writing to said trust company a successor trustee, and thereupon the certificates of stock of said — company standing in the name of the trustees may be indorsed or transferred by any successor trustee for the time being, and such successor trustee shall have the power of sale as conferred by this agreement, and all other powers herein conferred.

Said trust company and its successors in this trust shall be the agent for the transfer of said capital stock of said — company until the expiration of said trust, for which services said trust company and its successors shall receive a reasonable fee to be paid by said — company. Said trust company or its successors may resign the trust at any time after giving — days' written notice of its intention so to do; and the parties hereto, or any of them, shall not be liable for anything done or omitted in good faith, by said trustees of said trust company, nor for the act of any agent or attorney employed in the execution of said trust. And if said trust company should refuse to further act as trustee, or in case of its removal, said trustees, acting under this agreement, may appoint a successor trust company to act under this trust under the same conditions and limitations as were imposed upon the former trust company so acting.



Said trustees are required to keep a record of their proceedings, and a majority of them shall constitute a quorum to transact business at any general meeting or special meeting duly called. This trust may be terminated prior to the term herein designated, by written consent of the trustees delivered to said trust company or its successor. And upon such termination, said certificates of stock deposited with said trust company shall be distributed among the registered stockholders of said stock as evidenced by said beneficial certificates of said trust company or its successor.

In witness whereof, the parties of the first part have executed this agreement by making deposit of said stock certificates as herein provided, and the parties of the second part have executed this agreement by affixing their names hereto as trustees.

(Signatures of the parties of the first and second parts.)

1. See also, *Venner v. Chicago City R. Co.*, 258 Ill. 523, 101 N. E. 949.

**6280. Agreement and declaration of trust establishing real estate company.**

This agreement, made this — day of —, 19—, by the stockholders of the — company, for the purpose of purchasing certain real estate hereinafter described, witnesseth:

That the original trustees under this agreement shall consist of — of —, state of —, and — of —, state of —.

That said trustees are authorized to purchase the estate known as — and situated in —, and to proceed as soon as practical to erect a new building thereon, and, for carrying out said purpose, to make all necessary contracts as they may deem advisable with reference to the erection of said building and the management of said estate; that after said new building shall have been completed, said trustees or their successors shall not incur any liability except such as may be incidental to the management of said estate so held by them, and then only in an amount not exceeding at any one time — dollars; that said trustees shall not have power to bind the stockholders of said trust estate personally, but that the persons contracting with such trustees shall have recourse only against said trust estate, for any debt incurred by said trustees, or any money that becomes due by rea-

son of the failure of said trustees or their successors to perform such contracts as entered into by them.

Said trustees shall be known as the trustees of "—", and any and all property conveyed to them under said title shall be held in trust under this agreement.

When subscriptions to said trust are paid, said trustees shall issue certificates therefor and shall also issue certificates of shares in said trust estate, said shares to be for the sum of — dollars each, and one share to be issued for each — dollars so paid. And such receipts and certificates shall be transferable only on the books of said trustees upon surrender thereof after all instalments due have first been paid.

The cost of said building shall include — per cent. of subscriptions procured by —, the same to be for his services in procuring said subscriptions. After the construction of said building, said trustees and their successors shall have a reasonable compensation for the care and management of said trust estate, and shall declare such dividends for distribution among stockholders thereof, as said trustees may deem advisable. A meeting of the stockholders shall be called annually by said trustees on the — day of — of each year, at which a full report of the management of said trust estate shall be made by the trustees for the preceding year. Said trustees may call special meetings of the stockholders at any time, upon a written petition of the holders of — per cent. of said stock. All notices of meetings shall be given in writing — days prior to such meeting, and if the meeting is special, the purpose thereof shall be stated in said notice, and if notice is mailed, postage prepaid, to the last address given by the stockholders to said trustees, it shall be binding on the stockholders. At any annual meeting, or at any special meeting called for that purpose, the holders of a majority of the stock of said estate may authorize a sale of said estate, or any part thereof, held by said trustees, and may alter or amend this agreement, and may also depose any or all of the trustees and elect others in their stead. Shares of stock of said estate may be voted by proxy, and — shareholders and — per cent. of all the stock shall constitute a quorum at a stockholders' meeting.

The trustees of said estate shall not have power to mortgage or sell said estate, or any part thereof, unless authorized by the stockholders as hereinbefore provided, except at the expiration of said trust, when action relating thereto has not been taken by the stockholders. The term of this trust shall not be for a longer period than — years after the last subscriber hereto has died.

The trustees shall not be required to give bond, and each shall be liable only for his wilful breach of this trust.

The subscribers hereby agree to pay to said trustees the amount set opposite their names, at such times and in such sums as said trustees or their successors may require. And if a subscriber neglects to pay an instalment required by said trustees, within — days after notice thereof, his subscription may be canceled by said trustees, and another subscriber accepted in his place. The subscriptions hereto shall be limited to — dollars, and no subscription shall be binding until the amount subscribed shall have reached the sum of — dollars, and after the subscriptions have reached said amount, the remainder of the total amount mentioned above shall be raised by mortgage on said estate. The signing of this agreement and declaration of trust by said trustees shall constitute their acceptance thereof. (The agreement may provide that the trustees shall give bond for the faithful performance of their duties as trustees, or that they shall act without such bond.)

SUBSCRIBER.	ADDRESS.	AMOUNT OF SUBSCRIPTION.
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
		_____,
		_____,
		Trustees.

## UNION LABOR CONTRACT.

### 6281. General form.

This agreement made and entered into this — day of —, 19—, by and between the — company, party of the first part, and the — union of the city of —, known as Local Union No. —, party of the second part, witnesseth:

That from and after the — day of —, 19—, and for a term of — years ending with the — day of —, 19—, the party of the first part binds itself to the employment in its factory of mechanics and workmen who are members of said labor union No. —, and agrees to respect and observe the conditions imposed by the constitution, by-laws and scale of prices of the second party, copies of which are hereunto attached and made a part of this contract.

And it is further understood and agreed by and between the parties hereto that the aforesaid constitution and by-laws may be amended by said party of the second part without the consent of said first party; provided, however, that such change shall not in any way conflict with the terms of the scale and rules as set forth in this contract.

It is further agreed and understood that the scale of prices attached hereto shall continue in operation, without change, during the life of this contract, except as may be mutually agreed upon between the parties hereto.

A standing committee of two representatives of the first party and a like committee of two representing the second party shall be appointed; the committee representing the second party shall be selected by said union; and in the case of a vacancy, absence or refusal of either such representatives to act another shall be appointed in his place. To this committee shall be referred all questions which may arise as to the scale of prices hereto or alleged violations thereof, which cannot be settled otherwise, and such joint committee shall meet when any question of difference shall have been referred to it for decision by the executive officers

of either party to this agreement. Should the joint committee be unable to agree, then it shall refer the matter to a board of arbitrators, the representatives of each party hereto to select one arbitrator, and the two to agree upon a third. The decision of this board shall be final and binding upon both parties.

It is further understood and agreed by the party of the first part that in the event of the installation of machines or substitution of machines other than those at present in use for — or —, a scale of wages may be agreed upon by the joint committee of the parties hereto; but if no satisfactory conclusion can be reached, the matter shall be referred for final settlement to a board of arbitrators as above provided for.

It is agreed by the said party of the second part that for and in consideration of the covenants entered into and agreed to by said party of the first part, the said party of the second part shall at all times during the life of this contract truly and faithfully discharge the obligations imposed upon it by furnishing men capable of performing the work required in the mechanical department of the factory of such first party over which department the second party has jurisdiction.

It is agreed that both the language and the spirit of this agreement between said first party and said second party make it imperatively obligatory of both parties, whenever any difference of opinion as to the rights of the parties under this contract shall arise, or whenever dispute as to the construction of the contract or any of its provisions takes place, at once to appeal to the duly constituted authority under the contract, such authority being the joint standing committee, to the end that fruitless controversy shall be avoided and harmonious relations be maintained, and the regular and ordinary transaction of the business in which the parties have an interest be insured beyond the possibility of interruption.

It is further understood and agreed that the party of the first part shall not now nor during the life of this contract enter into any association or combination hostile to the — union, nor shall it at any time render assistance to such hostile combination or association by suspension or publication or any other act cal-

culated to injure the — union. And the party of the second part hereby agrees to enter into no combination or association with the intent or purpose of injuring the first party or its property, and shall not be a party to any hostile act with similar intent. The said second party hereby reserves to its members the right to refuse to execute or construct work received from or destined for unfair employment or publications.

This contract shall immediately become null and void in the event that the charter of the second party is suspended or surrendered or all union labor shall be immediately returned to the proper authorities. This contract shall be null and void in case of trouble with an allied craft, providing such trouble cannot first be settled by arbitration, such arbitration to be in accordance with the provisions of this contract.

In witness whereof, etc.

### WAREHOUSE CONTRACTS.

#### 6285. Warehouse receipt—Grain.

— Elevator Company.

No. —.

—, 19—.

Received of —, — bushels of —, which has been received into store, to be stored with grain of the same kind and grade by inspection, and is deliverable to the order of said —, upon the return of this receipt properly indorsed, and the payment of proper charges. Said elevator company is not to be liable for loss or damage by fire or heating.

—, Secretary.

1. See ante, vol. 4, § 3098.

#### 6286. Agreement to store furniture.

This agreement, made this — day of —, 19—, between — of —, warehouseman, and — of —, owner.

Whereas, said warehouseman owns and operates a warehouse at — street, in the city of —, for the purpose of storing household goods and effects, and said owner desires therein to store his household goods for an indefinite period; now, therefore, in consideration of the payment by said owner of the stipulated

sum of —— dollars per month by said owner, said warehouseman hereby agrees to haul all said household goods and effects from their present location at No. —— —— street, in said city, to said warehouse and receive the same into storage, to be stored in a room by themselves and to be deliverable to said owner or order upon the payment of said sum above stipulated. Said warehouseman shall keep said goods insured against loss or damage by fire or other casualty in consideration of said payments, and it is expressly understood that the payments due from said owner shall be a lien upon said property until paid, and that said goods shall not be moved until said lien is fully discharged.

In witness, etc.

1. See ante, vol. 4, § 3100.

**WATER AND WATER SUPPLY.****6290. Grant of water power.**

This deed made this the —— day of ——, 19——, by —— of ——, in the state of ——, party of the first part, and —— of ——, state of ——, party of the second part, witnesseth:

That whereas each of said parties hereto are seized in fee of two contiguous tracts of land in —— county, state of ——, upon one of which tracts belonging to the party of the first part is located a dam and a flume connected with —— river, and

Whereas the said second party is a lower riparian owner and desires to obtain water power from said dam,

Now, it is hereby agreed by said first party that in consideration of —— dollars paid to him by the second party, the receipt of which is hereby acknowledged, that the second party, his heirs and assigns shall have the right to use all the water of said river which can be conducted from —— side of said dam in a flume to be constructed by and at the expense of the second party, —— feet wide and —— feet deep, as follows: ——, and to have and to hold said easement upon the following terms and conditions: ——.

In witness whereof, etc.

**6291. Contract for water for irrigation purposes.**

This contract, made and entered into the —— day of ——, 19——, between ——, party of the first part, and ——, party of the second part, witnesseth:

That the first party in consideration of —— dollars to him in hand paid, receipt whereof is hereby acknowledged, and for the further consideration of —— dollars, and interest at —— per cent. per annum to be paid in the manner and at the times hereinafter set forth, the said party agrees to convey and deliver to the said second party upon the following described real estate situated in —— county, ——, to wit: (here describe land), a water-right of one hundred inches of water in either the ——



canal, a corporation, or the — company's canal, a corporation, provided, however, that if said water-right is furnished in the said — canal, it shall be conveyed to said land through said — company's canal, and diverted as though it were taken from said last-named canal. It is understood and agreed by and between the parties that in consideration of the covenants herein the said second party agrees to pay — dollars with interest at — per cent. per annum on —, 19—, and the balance in one year from said last-named date with interest at — per cent. per annum and should said water-right be given in the — company's canal, said deferred payments are to be made as follows: two hundred dollars annually with interest at — per cent. per annum until paid.

In witness whereof, etc.

1. Gagnon v. Molden, 15 Idaho 727, 99 Pac. 965.

#### 6292. Irrigation contract.

This agreement, made and entered into this — day of —, 19—, by and between — company, party of the first part, and —, party of the second part, witnesseth:

That the said first party, for and in consideration of the sum of one dollar, to it paid by second party, the receipt of which is hereby acknowledged, and for the additional annual rental of — dollars, to be paid by second party, agrees that, after reserving for its own special use — inches of water out of the amount decreed it, it will furnish to the said second party, out of the overplus to which it is entitled by virtue of said decree, — inches of water, according to first party's system of measurement (provided always there is sufficient water in the — creek to furnish the same according to the decree rendered and priorities of ditches taking water therefrom), upon the following conditions:

First party is to keep the ditch in good repair, and of sufficient dimensions to carry the amount of water decreed it, and to furnish second party the said — inches of water year after year, for and during the irrigation season of each and every year, so long as the said second party shall pay the said annual rental therefor. And it is expressly agreed to, by and between

the parties hereto, that the said second party purchases and takes said interest in and to said water according and subject to the customs of consumers of water from said ditch; and that, in the event of his failure to get his full quota of water, or any part thereof, as aforesaid, by reason of a scarcity of water in said creek, and reservation of water by said first party, and the respective interests of prior claimants, he will make no claim to or for a pro rata distribution of what water may be running in said ditch at such time, but will concede to all claimants and consumers of water from said ditch prior to him in point of time the full amount of their respective claims (priorities to be numbered according to dates of agreements, and such agreement to be executed in duplicate). Upon the failure of the said second party to pay said annual rental as aforesaid, he will forfeit and relinquish all rights and claims whatsoever both against said first party and in or to the use of said water from said ditch.

In witness, etc.

**WILLS.****6295. Contract to make will.**

This agreement made and entered into this —— day of ——, 19——, by and between ——, party of the first part, and ——, party of the second part, witnesseth:

That whereas said second party has performed work and labor for and on behalf of first party, and does by these presents hereby agree to continue to so perform such services for first party, and to perform the other covenants and agreements herein contained, said first party, in consideration thereof and to compensate and pay said second party for such work and labor performed and to be hereafter performed, does hereby agree to make and execute his last will and testament wherein first party agrees to will, devise and bequeath to second party the farm on which first party now lives, which farm is more particularly described as follows, to wit: (here describe land).

It is understood and agreed by and between the parties hereto that said services performed and to be performed by second party shall be paid for at the death of first party by second party accepting said farm in accordance with the provisions of the said will to be hereafter made and executed by first party, and that said devise shall be in full payment and satisfaction for all services rendered and to be hereafter performed by second party.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above written.

\_\_\_\_\_  
\_\_\_\_\_.

1. Jaffee v. Jacobson, 48 Fed. 21, 14 L. R. A. 352.
2. See also, ante, vol. 3, §§ 2036, 2325.

**6296. Agreement to give effect to intended will not executed.**

To all to whom these presents shall come: Whereas ——, late of ——, died on the —— day of ——, intestate, leaving the undersigned ——, —— and ——, his three children and only next of kin him surviving; and whereas shortly before the deceased,

the said — gave instructions to his solicitors for the preparation of his last will, and the same was drafted, but never signed by the said —; and whereas the draft of the will marked A this day signed by all the parties hereto is admitted by them and each of them to contain the testamentary dispositions of the said —, and all said parties are desirous, notwithstanding the intestacy of the said —, to deal with and dispose of all his real and personal estate in accordance with the terms of said drafted will: Now in consideration of the premises, and in order to avoid questions and disputes as to the division of the real and personal estate of the said —, it is hereby declared and agreed and the said parties hereto mutually covenant as follows:

All the real and personal property of the said — shall be disposed of, divided and dealt with in accordance with the terms of the said document marked A, and signed by the said parties hereto as aforesaid.

All and every of the said parties hereto, and their respective heirs, executors, administrators and assigns, shall execute all such deeds and documents, and do all such acts as may be necessary, or be deemed expedient, to give complete effect to this agreement, and the costs of the preparation and execution of such documents shall be deemed expenses attending the execution of the trusts and disposition declared and contained in the said document marked A.

None of the said parties, or his or her heirs, executors, administrators or assigns shall, as next of kin or heir at law of the said —, or in any other character bring any action or take any proceedings against any other party hereto, his or her heirs, executors, administrators or assigns, in reference to any part of the said real or personal property of the said —; but this shall not prejudice the right of any party to enforce performance of this agreement or of any of the terms hereof.

The said —, one of the sons, shall be allowed to obtain without opposition letters of administration to the personal estate and effects of the said —, but such estate and effects shall be administered and dealt with according to the terms of this agreement.

In witness whereof, the said parties hereunto set their hands and seals this — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

# **6297. Agreement to ignore will.**

To all to whom these presents shall come:

Whereas —, late of —, died on the — day of —, 19—, testate, leaving the undersigned —, — and —, his three children and only next of kin him surviving; and

Whereas said decedent, by his last will and testament made disposition of all his property both personal and real by giving, devising and bequeathing all of same to said parties herein; and

Whereas the parties hereto being dissatisfied with the provisions of said will and the disposition of said property by the terms and items of said will, and desiring that the property left by said decedent be distributed in a different and more equitable manner than the distributions made by said decedent in his last will:

Now, therefore, be it understood and agreed by and between the parties hereto, each for himself, that in consideration of the covenants and agreements herein contained and in further consideration of the distribution of said estate to be hereafter made, that said last will and testament and the terms thereof shall not be considered or taken into account in the distribution of said estate, and that said will shall be and is hereby ignored as and for the last will and testament of said decedent.

It is further understood and agreed that this contract shall be and become binding on each of the above-named parties, their heirs, executors and administrators.

In witness whereof, said parties and each of them have hereunto set their hands and seals this — day of —, 19—.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

1. See ante, vol. 1, §§ 233, 233n.

**6298. Agreement not to contest will.**

To all to whom these presents shall come:

Whereas —, late of —, died on the — day of —, testate, leaving the undersigned —, — and —, his three children and only next of kin surviving; and

Whereas said decedent, by the terms and provisions of his last will and testament, gave, devised and bequeathed his entire estate consisting of real and personal property to said — and —, two of his children aforesaid, and failed and omitted to make any mention of or to give, devise or bequeath any money or anything whatsoever of any kind or character to said —, one of decedent's children aforesaid:

Now therefore, be it understood and agreed by and between said — and —, first parties, and —, second party, being the children of said decedent as aforesaid, that in consideration of the sum of — dollars in hand paid by first party to second party, the receipt of which is hereby acknowledged, said second party hereby agrees that he will not contest or attempt to set aside the said will of said decedent, but hereby consents and agrees that said will shall stand as and for the last will and testament of said decedent.

It is further agreed by and between the parties hereto that the stipulations and agreements herein contained shall bind the parties hereto, their heirs, executors and administrators.

In witness whereof, first and second parties have hereunto set their hands and seals this day and year above mentioned.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6299. Agreement to accept advancement instead of inheritance.**

This agreement, made this — day of —, 19—, between — of —, party of the first part, and — of —, party of the second part, witnesseth:

Whereas, said party of the first part is the lawful son of said party of the second part and has received at various times from said party of the first part the sum of — dollars, after becoming twenty-one years of age, and, whereas, said party of

the first part is now about to receive the further sum of —— dollars:

Now, therefore, in consideration of said premises, said party of the first part hereby agrees to accept said payments already received and said payment now made, the receipt whereof is hereby acknowledged, as his full, complete and entire share in all the property of said party of the second part, real, personal and otherwise, in the event of his death. .

It is expressly understood and agreed that the provisions of this contract shall not operate to bar said party of the first part from receiving a certain piece of personal property which it is the desire of said party of the second part that said party of the first part shall have at the death of said party of the second part, the same being fully described as follows: (here insert description), but in all other respects this agreement shall act as a bar to prevent said party of the first part from claiming or receiving any inheritance from said party of the second part of whatever kind or nature.

This agreement, after its execution, shall be filed in the office of the clerk of the court of —— county, state of ——, and a further copy thereof shall be placed in the hands of one ——, to be held by him as administrator until the death of said party of the second part, provided said party of the second party shall not outlive said party of the first part.

In witness, etc.





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